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No. .....

A. Y. ALLE

v.

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ON DIRECT APPEAL F
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SDICTIONAL STATEMENT

JOHN L. HILL
Attorney General of Texas
JOHN M. BARRON
First Assistant
LARRY F. YORK
Executive Assistant
JOE B. DIBRELL
Assistant Attorney General
LANG A. BAKER
Assistant Attorney General
GILBERT J. PENA
Assistant Attorney General
Attorneys for Appellants
P.O. Box 12548, Capitol Station
Austin, Texas 78711

INDEX

CITATIONS

CASES — *Page*

CITATIONS—Continued

CASES *Page*

CITATIONS—Continued

CASES *Page*

CITATIONS—Continued

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. .....

A. Y. ALLEE, ET AL,

Appellants.

v.

FRANCISCO MEDRANO, ET AL,

Appellees.

ON DIRECT APPEAL FROM THE UNITED STATES THREE-JUDGE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

Appellants' appeal from the judgment of the United States Three-Judge District Court for the Southern District of Texas, entered on December 4, 1972, declaring that Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas, (prohibits "mass" picketing), Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, (prohibiting "secondary picketing", "secondary strikes", and "secondary boycotts"), Article 784 of the Texas Penal Code, Article 474 of the Texas Penal Code, Article 482 of the Texas Penal Code, and Article 439 of the Texas Penal Code to be unconstitutional in part and enjoining the enforcement of such statutes; and Appellants submit this jurisdictional statement, pursuant to Rule 15 of the Rules of the Supreme Court, to show that the Supreme Court of the United States has jurisdiction of

the appeal and that substantial questions are presented.

OPINION BELOW

The Three-Judge Court below, the United States District Court for the Southern District of Texas, entered an opinion on June 26, 1972, holding several state statutes unconstitutional and that the Appellees were entitled to certain declaratory and injunctive relief against its enforcement by state officers and officials. This opinion is reported at 347 F.Supp. 605, and a copy is attached hereto as Appendix "A". The court below also entered an additional memorandum and order dated December 4, 1972, a copy of which is attached hereto as Appendix "B", and a final judgment was entered on December 4, 1972, a copy of such judgment is appended as Appendix "C".

JURISDICTION

This suit was brought under the provisions of Title 28, United States Code, Sections 1343, 2201, 2202, 2281 and 2285 and Title 42, United States Code, Sections 1983 and 1985; and the First and Fourteenth Amendments to the Constitution of the United States in the United States District Court for the Southern District of Texas seeking declaratory and injunctive relief in an attack on the constitutionality of certain state statutes, and an injunction was sought restraining the officers and officials from enforcing these statutes against Plaintiffs and their class. The complaint also alleged that the Defendants, as state officials acting under color of state law, conspired and deprived Plaintiffs of their civil rights, privileges and immunities protected by the laws and Constitution of the United States. A Three-Judge District Court was formed to

hear this cause as provided for by 28 U.S.C. Section 2284. Final judgment of the Court was entered on December 4, 1972, which judgment held that part of Article 5154d of Vernon's Civil Statutes of the State of Texas and part of Article 5154f of Vernon's Civil Statutes of the State of Texas and portions of Article 474, 482, and 439 of the Texas Penal Code were unconstitutional and granted an injunction against its enforcement by state officers, their successors, agents and employees. Notice of Appeal was mailed to that Court on December 18, 1972.

The jurisdiction of the Supreme Court to review the decision of the Three-Judge Court is conferred by 28 U.S.C. Section 1253, 2101(a)(b) and 2281. The following cases sustained the jurisdiction of the Supreme Court to review the judgment of this case on direct appeal: *Florida Lime and Avocado Growers, Inc. v Jacobson,* 362 U.S. 73 (1960); *Ness Produce Co. v. Short,* 263 F.Supp. 586 (D.C. Or. 1966), affirmed at 385 U.S. 537 (1967).

STATUTES INVOLVED

As noted above, the Three-Judge District Court below held that part of Article 5154d of Vernon's Civil Statutes of the State of Texas and part of Article 5154f of Vernon's Civil Statutes of the State of Texas and portions of Article 474, 482, and 439 of the Texas Penal Code were unconstitutional and granted an injunction against its enforcement by state officers.

The court declared and adjudged that Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, was null and void. The said portion of the statute reads as follows:

"Section 1. It shall be unlawful for any person,

singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

" 'Mass picketing,' as that term is used herein, shall mean any form of picketing in which:

"1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

"2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions."

The Court declared and adjudged that Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, were null and void. The said portion of the statute reads as follows:

"Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

"Section 2. * * *

"b. 'Secondary strike' shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

* * *

"d. The term 'secondary picketing' shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

"e. The term 'secondary boycott' shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

"(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

"(2) Picketing such person, firm or corporation; or

* * *

"(4) Instigating or fomenting a strike against such person, firm or corporation; or

"(5) Interfering with or attempting to prevent the free flow of commerce; or

"(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute."

* * *

"h. The term 'labor dispute' is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee

members only of such union, a labor dispute within the meaning of this Act."

The Court declared and adjudged the following portion of Article 474 of the Texas Penal Code to be null and void and restrained its enforcement. Article 474 has since been amended, but it read in pertinent part at the time of the events from which this litigation arose, as follows:

> "Whoever shall go into or near any public place, or . . . near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek . . . in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars ($200)."

The Court declared and adjudged that Article 482 of the Texas Penal Code was null and void. Such statute reads as follows:

> "Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

The Court declared and adjudged that Article 439 of the Texas Penal Code was null and void. The said statute reads as follows:

> "An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof"

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether, as held by the court below, Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas is unconstitutional because of impermissible broadness?

2. Whether, as held by the court below, Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas is unconstitutional because of impermissible broadness?

3. Whether, as held by the court below, Article 482 of the Texas Penal Code is unconstitutional because of impermissible broadness?

4. Whether, as held by the court below, Article 439 of the Texas Penal Code is unconstitutional because of impermissible broadness?

5. Whether the court below can properly order injunctive relief, as it did, against peace officers of the Texas Department of Public Safety and the law enforcement officials of Starr County in this case where prosecutions were pending, and whether the court improperly interpreted *Dombrowski v. Pfister*, 380 U.S. 479 (1965), *Cameron v. Johnson*, 390 U.S. 617 (1968), *Younger v. Harris*, 401 U.S. 37 (1971), and its companion cases, in reaching the conclusion that injunctive relief would lie in the present case?

STATEMENT OF THE CASE

The Valley Farm Workers Organizing Committee, AFL-CIO, instituted a strike from June, 1966, until June, 1967, in an attempt to encourage the predominately Mexican-American Farm Workers in Starr

County to join with the union in organizing and forming a union. In pursuit of their objectives, and according to union President Domingo Arredondo, the picketing occurred every day (except Sunday) until its further continuance was enjoined by the state district court. In pursuit of their objectives, strikes were called; and picket lines, rallies and demonstrations were employed to enlist non-union laborers in the common cause. The record reflects that this picketing was accompanied by destruction of property belonging to the farms being picketed, property of employees of the farms and property of the Missouri-Pacific Railroad. There also were acts of violence (shooting at persons and equipment), threats of violence, and display of weapons. Although not a party to this feud, the Missouri-Pacific Railroad Company suffered partial destruction of a bridge by arson, found that objects had been placed on railroad tracks which could derail trains, had rocks thrown at trains, and other incidents which endangered the operation of the railroad to such an extent that they found it necessary to keep a number of special agents on hand to attempt to protect railroad property and in addition to ask assistance from the Texas Rangers in order to secure the safety of their trains.

The strikers attempted to take over the Starr County Courthouse on two or three occasions, intimidated officials and even assaulted a deputy sheriff to the extent of preventing him from making an arrest.

These activities, and the responses triggered thereby, resulted in a controversy characterized on both sides by strong emotions and sometimes violent reactions. During this period supporters of the strike came into open conflict first with local law enforcement agents and later with the Texas Rangers, which lead

to numerous arrests and the initiation of prosecutions under various state laws. From the start of this strike, the record reflects that there was a total disregard for existing laws and that the small group of deputy sheriffs of Starr County became extremely reluctant to make arrests, but were forced to do so by the demands of the farmers that the law be enforced and the property protected. Some of the principle strikers were known to have previously committed serious crimes including murder.

Because of the fear of breakdown of the law enforcement, to a great extent because of a large number of strikers and relatively small number of law enforcement officers, Starr County officials made a strong appeal that the Texas Rangers be sent to preserve order and prevent bloodshed.

Over a period in excess of one year in which picketing occurred daily, only on fifteen occasions were arrests made in Starr County. On two occasions the arrests were made in Hidalgo County and on some occasions in Cameron County. These out of county arrests resulted from an attempted interference with the normal operations of trains by the Missouri-Pacific Railroad in these counties. Destruction of property ended with the stopping of picketing by injunction.

Plaintiffs brought this suit against certain Texas Rangers, officers of the State of Texas, and other public officials of Starr County, seeking declaratory and injunctive relief in an attack on the constitutionality of certain state statutes under which arrests were made, and an injunction was sought restraining Defendants from enforcing these statutes against the Plaintiffs and their class.

THE QUESTIONS RAISED ON APPEAL ARE SUBSTANTIAL

The questions heretofore set out present, Appellants feel, separate and valid issues. However, some may be more conveniently and meaningfully discussed and argued when considered together.

ARTICLE 5154d OF THE REVISED CIVIL STATUTES OF TEXAS IS NOT OVER BROAD SO AS TO ABRIDGE RIGHTS OF FREE SPEECH, ASSEMBLY, AND PETITION

The statute involved in no way prohibits or restricts freedom of speech or petition. It does seek to regulate conduct utilized to further the ends of speech and expression.

In view of the attack on these statutes as unconstitutional for over breadth under the First and Fourteenth Amendments of the Constitution of the United States, it is necessary to examine them in view of the background of the case at hand. In May, 1966, the United Farm Workers Organizing Committee attempted to organize farm workers in the Starr County area. Particular emphasis was given in an attempt to organize the workers then working for Las Casitas Farms, Incorporated. There is no evidence to reflect that any member of the Organizing Committee had been employed in recent years by the Las Casitas Farms, Incorporated, nor is there any evidence that any of the employees of the Farm ever joined or attempted to join the United Farm Workers Union. An attempt was also made to organize the workers in the packing shed operation by Las Casitas Farms, Incorporated. A vote, resulting in a tie, was taken under the direction of the National Labor Relations Board, an

equal number of workers favoring the Union as the bargaining agent and an equal number of workers being opposed. During the period of time from May, 1966 and for a number of months in 1967, the Union was very active. Attempts were made to prevent "green card" workers from coming into the United States by blocking the International Bridge between Mexico and the United States by massing in the road adjacent to Las Casitas Farms, Incorporated, and by addressing the farm workers working in the fields on Las Casitas Farms through loud speakers located on adjacent property. During this period of time, there were alleged threats of violence reported in local newspapers and a Missouri Pacific bridge was burned. The Union organizer was reported to have threatened the Texas Rangers. Not only were roads obstructed in the vicinity of Las Casitas Farms, but on one occasion, a large number of individuals gathered in Mission, Texas, in order to prevent the passage of a Missouri-Pacific train carrying cantaloupes which had been originally grown on Las Casitas Farm property. Organizers were alleged to have used loud and obscene language in attempts to threaten workers in the field. One of the members of the Committee who had previously been convicted of murder was seen in possession of a rifle and subsequently arrested. Because of the acts of violence and disturbances created by the pickets, an order was obtained through a state district court prohibiting further picketing.

Article 5154d prohibits "mass" picketing. It was designed to prevent the massing of pickets and the regulation of picketing activities without prohibiting them. Pickets were prevented from physically obstructing ingress and egress to any premises, but were allowed to have sufficient number, in the opinion of the Legis-

lature, to convey the message that the premises in question were being picketed and the reasons for the dispute.

This Statute in Section 2 forbids the use of insulting, threatening or obscene language. Section 3 prohibits picketing accompanied by slander, libel, or public display or publication of oral or written misrepresentations and Section 4 prohibits picketing for the purpose of securing a disregard, breach, or violation of a valid subsisting labor agreement. Section 4a prohibits activity after court of competent jurisdiction had enjoined such picketing.

The State has long been recognized to have the right to regulate picketing but not to prohibit it. See *Thornhill v. Alabama*, 310 U.S. 88, 60 S. Ct. 736; *Building Service Employees International Union Local 262 v. Gazzam*, 339 U.S. 532, 70 S.Ct. 784; *Giboney v. Empire Storage and Ice Co.*, 336 U.S. 490, 69 S.Ct. 684; *Bakery and Pastry Drivers and Helpers Local 802 v. Wohl*, 315 U.S. 769, 62 S.Ct. 816; *Carpenters and Joiners Union, Etc. v. Ritters Cafe*, 315 U.S. 722, 62 S.Ct. 807; *Milkwagon Drivers Union, etc. v. Meadowmoore Dairies*, 312 U.S. 61 S.Ct. 552; *International Union of Operating Engineers v. Cox*, 219 S.W.2d 787 and *Geissler v. Goussoulis*, 424 S.W.2d 709. Constitutional guarantees of freedom of speech do not grant an unabridged license to engage in any type activity because a part of such activity is a dissemination of ideas. Mr. Justice Black stated in *Giboney, et al v. Empire Storage and Ice Company*, supra, page 502:

> "But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."

In the case of *Cameron, et al v. Johnson, etc., et al,* decided by the United States Supreme Court on April 22, 1968, 390 U.S. 611, 88 S.Ct. 1335, Mr. Justice Brennan stated that picketing and parading were subject to regulation even though intertwined with expression and association citing *Cox v. Louisiana,* 379 U.S. 559, at page 563. He found a Mississippi statute known as "The Anti-Picketing Law" to be constitutional stating that the statute does not prohibit picketing "so intertwined unless engaged in in a manner which obstructs or unreasonably interferes with ingress or egress to or from the courthouse. Prohibition of conduct which has this effect does not abridge constitutional liberty 'since such activity bears no necessary relationship to the freedom to . . . distribute information or opinion.' " *Snyder v. State,* 308 U.S. 147, 161.

In *Cox v. Louisiana,* supra, page 564, Mr. Goldberg stated that the statute in question is:

> ". . . a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and . . . the fact that free speech is intermingled with such conduct does not bring with it constitutional protection."

The Legislature of the State of Texas has the duty of protecting the public of this State against unlawful conduct and in safeguarding the tranquility of its inhabitants. In exercising its discretion in this regard, the Legislature concluded that the idea sought to be disseminated could clearly be projected by not more than two pickets located within fifty feet of any entrance of the premises being picketed or within fifty feet of each other. Unless it is the intent of pickets to intimidate, the public can be made legally aware of grievances sought to be corrected within the limits of the picketing permitted by the Statute. Courts of other

states have not been reluctant to limit the number of pickets allowable. See *Rice & Holman v. United Electrical Workers*, 65 A. 2d 638 (New Jersey Superior Ct. 1949); *Standard Appliances v. Korman*, 111 N.Y.S. 2d 783, 786 (New York S.Ct. 1952); *Tarrytown Road Restaurant, Inc. v. Hotel and Restaurant Employees*, 115 N.Y.S. 2d 626, 631 (New York S.Ct. 1952); *Stern-Fair Corporation v. Moving Pictures Operators*, 139 N.Y.S. 2d 145, 150 (New York S.Ct. 1955); *Ballas Egg Products Company, inc. v. Meat Cutters*, 160 N.E. 2d 164 (Ohio Ct. Com.Pls. 1959).

Although the pickets are limited in number, the Legislature has likewise found the placing of obstructions either in the person of the pickets or in the placing of vehicles or other physical obstructions to constitute mass picketing. The cases above cited clearly give the Legislature the right to regulate in this field. Without going over the definition line by line, we also present that the term "picket" and the term "picketing" have been defined clearly and concisely so that anyone affected by the Statute will know if he comes within the category of the definition.

In a case decided in 1968 by the San Antonio Court of Civil Appeals, *Geissler v. Goussoulis*, 424 S.W.2d 709, the court stated:

> "We cannot agree that the numbers and distance formula must fall because of vagueness. It embodies a precise formula and does not leave it to law enforcement officers to define the conditions under which persons wishing to disseminate the facts of a labor dispute may use the streets and sidewalks. Any person wishing to engage in picketing activities can determine, by reading the statute, exactly what is prohibited." Page 711

The Court continued:

". . . We have carefully examined the record before us and find nothing to justify the conclusion that, as applied to the facts of this case, the regulation operates as an unconstitutional abridgement of the right of freedom of expression. The physical facts here are such that two pickets can be stationed at every entrance to the cafe without violating the statute, so that the dissatisfied employees can communicate their message to all persons who attempt to enter the restaurant, be they prospective customers, employees or suppliers."

The latest pronouncement on the constitutionality of 5154d, Vernon's Ann.Civ.St. is found in *Sabine Area Bldg. T.C., AFL-CIO v. Temple Assoc. Inc.*, 468 S.W.2d 501, where on May 27, 1971, the Court of Civil Appeals of Texas, at Beaumont reaffirmed the holding in *Geissler v. Goussoulis*, 424 S.W.2d 709 (Tex.Civ. App.—San Antonio, 1967, error ref. n.r.e.).

With respect to the second paragraph of Article 5154d §1, the three-judge court clearly misread the language of the statute as well as misread the holding of this Court in *Cameron*, supra. The Mississippi statute upheld by this Court in *Cameron* prohibited "picketing * * * in such a manner as to obstruct *or* unreasonably interfere with free ingress or egress . . ." (emphasis added) (390 U.S. at 616). The Mississippi statute is therefore clearly *broader* than the challenged Texas statute which, in the paragraph under discussion, prohibits pickets which constitute an actual obstacle "either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions". This limiting language contained in the statute is certainly sufficient to withstand any attack for overbreadth, and clearly is more narrowly drawn than the constitutional Mississippi statute which, in addition to the actual obstruction

here prohibited, prohibits unreasonable interference with free ingress or egress.

Article 5154d is clear, concise and is a valid exercise of legislative discretion under its inherent police power. We, therefore, contend that it is constitutional in every respect.

ARTICLE 5154f CLEARLY DEFINES CONDUCT PROHIBITED AND IS NOT UNCONSTITUTIONAL BECAUSE OF IMPERMISSIBLE BROADNESS.

Article 5154f of the Revised Civil Statutes of Texas prohibits secondary picketing, secondary strikes, and secondary boycotts. It carefully defines the terms used in the act and specifically delineates those actions prohibited. The right of the State to adopt such policy is well settled.

This Honorable Court in *Carpenters & Joiners Union of America, et al, v. Ritter's Cafe, et al*, 315 U.S. 722, 728 (1942) stated as follows:

> "In forbidding such conscription of neutrals, in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into doctrinaire dogma. We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.' *Thornhill v. Alabama*, 310 U.S. 88, 103-04.

"It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end when we find that the Fourteenth Amendment does not deny her the power to enact that policy into law."

In that case it was held that the Texas Anti-Trust Laws could be applied to secondary picketing. Rather than rely on the generalities of the Anti-Trust Laws the Texas Legislature spoke specifically to this problem in 1947, adopting the statute here challenged.

It is true that in a number of instances, the Supreme Court of Texas has held that the statutes, if applied to a particular fact situation, would be unconstitutional. See *International Union of Operating Engineers v. Cox*, 219 S.W.2d 729 (1949), but the Texas Supreme Court has never held that Article 5154f was unconstitutional. The Supreme Court of the State of Texas, however, has not attempted to define or limit the application of the statute and we know of no convictions thereunder which have been appealed to the Texas Court of Criminal Appeals. The highest criminal court in the State has not had an opportunity, therefore, to interpret or define or determine the constitutionality of Article 5154f, as applied in criminal cases or in particular to a fact situation of the nature involved herein.

The Texas courts have also been alert to the possibility that the statute might be applied unconstitutionally in a particular case. In *Ex Parte Henry*, 147 Tex. 315, 215 S.W.2d 588 (1948), it held that peaceful picketing at the site of the primary dispute was constitutionally protected, though its effect was to induce the railroad with which there was no dispute to refuse to spot cars on the siding. In that case the court said an injunction could have issued if there were physical obstruction of the railroad by the pickets.

Even if the activities of the picketers was constitutionally protected, this is a matter to be raised defensively when the participants are prosecuted in a State court. The Texas courts have demonstrated that they will lend a sympathetic ear to any claim of unconstitutional application of Article 5154f. Even if these persons were arrested when they should not have been, this is not enough to establish a willful deprivation of constitutionally protected rights, as required by *Cruz v. United States*, 325 U.S. 91 (1945), and *Williams v. United States*, 341 U.S. 97 (1951).

The three-judge district court held Article 5154f unconstitutional in its analysis of the three operative concepts defined in §2, to wit: 2(d) "secondary picketing" 2(b) "secondary strike" and 2(e) "secondary boycott". We will discuss the definitions in this order, following that of the analysis of the court below.

Section 2(d) defines "secondary picketing" as "the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute . . . exists between such employer and his employees". The rationale of the court below in finding this definition overbroad is "It clearly relies on the absence of an employer-employee relationship and this is impermissible" (347 F.Supp. at 627) under the case of *American Federation of Labor v. Swing*, 312 U.S. 321 (1941). The definition of secondary picketing, however, does not turn exclusively upon the absence of an employer-employee relationship: essential to the definition in 2(d) is the definition of "picket" set forth in 2(c), and completely ignored by the district court in its analysis. Certainly it is not the absence of an employer-employee relationship wherever found that is impermissible: if so no secondary picketing prohibition could be valid. It is the reliance of a statute exclusively

upon the absence of such relationship which is impermissible. The Texas statute requires that the absence of this relationship be accompanied by a person stationed for one of the express purposes enumerated in 2(c). As this Court stated in *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284, 293 (1957), after reviewing the development of the law in this area:

> "This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy."

The enumerated purposes set out clearly and precisely in the 2(c) definition of "picket" are statements of public policy, the enforcement of which is sought by this statutory prohibition of secondary picketing made in full conformity with the *Vogt* doctrine announced by this Court.

The rationale of the court below in invalidating the §2(b) definition of "secondary strike" is wholly inadequate even if accepted as accurate, which it is not. On the basis of the "aid or abet" clause of §1, the court ruled all of §2(b) unconstitutionally overbroad because of possible inclusion of protecting picketing. Even if this reasoning were sound it would at most justify holding the "aid or abet" clause invalid as applied to §2(b). However the reasoning itself is fundamentally unsound. Any picketing which would constitute aiding and abetting a secondary strike can be constitutionally prohibited by the Texas statute under the above quoted doctrine announced in *Vogt*. Prohibition of secondary strikes is certainly within the area of permissible state public policy, and *Vogt* expressly

permits prohibition of picketing "aimed at preventing effectuation of that policy".

Turning now to the §2(e) definition of "secondary boycott", the "aid or abet" argument of the court below is fallacious for the same reasons as argued above with respect to secondary strikes. The court hinges its alternative argument for invalidating §2(e) upon a wholly inadequate analysis of the "injury or damage" phrase:

> "Simply stated, Texas has prohibited secondary boycott picketing, the purpose of which is either to cause 'injury or damage' or to encourage acts which will cause 'injury or damage'. These are broad terms; they will not point to specific evils."
>
> * * *
>
> "The evil here is 'damage or injury' of any character or degree no matter how slight or subtle". 347 F.Supp. at 628.

The court appears to have ignored the greater portion of §2(e) which sets forth in detail the specific manner by which the damage or injury must be inflicted, each of which constitutes a statement of legitimate public policy sought to be protected by this legislative enactment, to wit:

> "(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or
>
> "(2) Picketing such person, firm or corporation; or
>
> "(3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or
>
> "(4) Instigating or fomenting a strike against such person, firm or corporation; or

"(5) Interfering with or attempting to prevent the free flow of commerce; or

"(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute."

It is the contention of Appellant that these limiting clauses of §2(e) spell out specifically state public policy prohibiting secondary boycotts, and that as such, the State may also prohibit picketing aimed at preventing effectuation of that policy, in accordance with the *Vogt* doctrine.

It is therefore clear that the rationale of the court below is inadequate to support its ruling of unconstitutionality with respect to Article 5154f, and furthermore that the reasoning of the court below is in error even to that limited extent to which it would hold minimal portons of that statute unconstitutional. Article 5154f is clear, concise and is a valid exercise of legislative discretion under its inherent police power. We therefore contend that it is constitutional in every respect.

ARTICLE 482 OF THE TEXAS PENAL CODE IS NOT UNCONSTITUTIONAL FOR OVER BREADTH.

Article 482 provides as follows:

"Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

This Honorable Court in *Chaplinsky v. State of New*

Hampshire, 315 U.S. 568, 62 S.Ct. 315, had before it for interpretation the New Hampshire abusive language statute. There this Court stated at page 571:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense comunication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.' *Cantwell v. Connecticut*, 310 U.S. 296, 309, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213, 128 A.L.R. 1352."

That Article 482 of the Texas Penal Code which prohibits the use of abusive language is constitutional is settled by this unanimous decision in *Chaplinsky*, supra, upholding a statute with a similar purpose but couched in far more general terms. See also the Arkansas statute, very similar in its language to this Texas statute, noted approvingly by this Honorable Court in *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 138 n. 5 (1957).

ARTICLE 439 OF THE TEXAS PENAL CODE IS NOT UNCONSTITUTIONAL.

Article 439 reads as follows:

> "An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof."

If Article 439 stood alone it might be subject to challenge on grounds of unconstitutional indefiniteness, though even that challege probably would fail. Insofar as it makes it criminal for three or more persons to aid each other "to commit an offense" it is merely a conspiracy statute. Cf. 18 U.S.C. Section 371. It also prohibits such an assembly "illegally to deprive any person of any right" the reference to the rights that are protected is surely not specific, though it is relevant to note that 18 U.S.C. Section 242, making it criminal to deprive any person "of any rights, privileges, or immunities secured or protected by the Constitution or Laws of the United States", has been upheld against challenge on the ground of vagueness. *Williams v. United States*, 341 U.S. 97, 100-101 (1951). The word "illegally" may well be the key, since it is not a conspiracy to deprive a person of a right that is prohibited, but only a conspiracy illegally to deprive him of a right. Thus this portion of the statute makes criminal a conspiracy to do something that the law of the State, including the civil statutes and the common law, prohibits.

For the purposes to this case Article 439 must be read together with Article 449. Taking these statutes together, as the Texas courts have consistently done, they say:

> An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner . . . to prevent any

> person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another . . .

This expresses in words of common understanding the kind of conduct by a group of persons that is prohibited by the statute. The notion that a group of persons have a constitutional right to prevent someone else from working at his employment is hardly likely to be the law. The Texas Court of Criminal Appeals has given these statutes very narrow interpretations and required that the indictments set out in detail the matter with which the persons are actually charged. For example, *Blackwell v. State*, 18 S.W. 676, the court said that if the indictment or information throughout did not show for what purpose the rioters assembled, the information was insufficient. In the case of *Follis v. State*, 40 S.W. 277, it was held that an indictment for unlawful assembly to prevent a party by violence from having a social gathering or dance at his house should allege that such party has a house and was giving or about to give a social gathering or dance. In *Luter v. State*, 22 S.W. 140, the court held information was defective under Article 449 for failure to set forth the nature of the "lawful employment."

In *Briscoe v. State*, (1961), 341 S.W.2d 432, the indictment was held defective because there was no notice as to whether the State would rely on intent by violence to disturb the victim and deprive him of his right to operate a lunch counter or would rely on proof on an intent to deprive him of such right by some means other than by the use of violence. The attention of the Court is also directed to *Tucker v. State*, (1961), 341 S.W. 433, and *Johnson v. State*, (1961), 341 S.W. 2d 434. Likewise in *Jones v. State*, (1962), 355 S.W.2d

727, the mere attempt to procure service at a railroad terminal without an act of violence or other violation of the law would not justify conviction.

We recognize that the right of lawful assembly is constitutionally protected. The statute is not directed at a lawful assembly, but at the unlawful one which is not constitutionally protected. See *Cox v. Louisiana*, 379 U.S. 559. It is well settled that courts are inclined to adopt that reasonable interpretation of a statute which moves it furthest from possible constitutional infirmity. *Kovacs v. Copper*, 336 U.S. 77 (1948); *Cox v. Louisiana*, supra. It has likewise been held that even a lawful assembly is subject to state regulation. *Poulos v. State of New Hampshire*, 345 U.S. 395 (1953). In the latter case the court stated at page 405:

> "The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or instruction . . . it has indicated approval of reasonable non-discriminatory regulation by governmental authority that preserves peace, order and tranquility without deprivation of First Amendment guarantees of free speech, press, and the exercise of religion. When considering specifically the regulation of the use of public parks, this court has taken the same position."

In the case of *Hughes, et al v. Superior Court of California*, 339 U.S. 460, 70 S.Ct.Rep. 718, the Court held that industrial picketing was subject to the control of a state if the manner in which the picketing was conducted or the purpose which it seeks to effectuate gives ground for its disallowance. The Court, however, held:

> "It has been amply recognized that picketing, not being the equivalent of free speech as a matter of

> fact, is not its inevitable legal equivalent. Picketing is not beyond control of a State if the manner in which the picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance."

See cases cited therein at page 466.

Texas has a "right to work law". Article 5207a, Vernon's Annotated Statutes, and similar statutes have been held constitutional by the Texas and the United States Supreme Courts. *Construction and General Labor Union v. Stephenson*, (Tex.Sup. 1950) 225 S.W.2d 958, *Building Service Employees Union, etc. v. Gazzan*, supra. To hold that the right to work law is constitutional and to hold that the State cannot declare illegal an assembly whose purpose is to prevent a person from pursuing his labor, occupation, or employment or intimidate him from following his daily avocation or to interfere in any manner with the labor or employment of another would make the right to work statute meaningless.

We submit that the statute in question is not unconstitutional for over breadth as the court below found.

THE COURT BELOW IMPROPERLY ORDERED INJUNCTIVE RELIEF AGAINST PEACE OFFICERS OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY AND THE LAW ENFORCEMENT OFFICERS OF STARR COUNTY IN THIS CASE WHERE PROSECUTIONS WERE PENDING IN THE STATE COURTS.

The effect of the holding in the court below was to require federal intervention and to threaten state prosecutions. The order of the court coupled with the injunction, prevents enforcement of the statutes, either by criminal complaint or civil petition, regardless of

the peaceful or non-peaceful nature of the picketing activities.

The Appellants, since the inception of this case, have contended that the Three-Judge Federal Court below lacked the power to enjoin pending state prosecutions.

The witnesses presented by Appellees in defense of their position and their contentions that the criminal charges pending against them were maliciously filed are supported only by the testimony of those who are charged with the commission of the crime. The case was brought about as an effort on the part of the Appellee to kill charges pending against them in state court by federal intervention rather than by allowing a jury of their peers to determine the questions of guilt or innocence as is provided by the Constitution of the United States and the State of Texas. It is important to note in this case that Appellees have not contented that the Appellants in the future will attempt to again institute proceedings against them under void statutes or because they wish to harrass Appellees by filing charges with no expectations of obtaining convictions. The record reflects a very good basis for Appellees not advancing this theory. The president of the Farm Workers Union, Domingo Arredondo, one of the Appellees herein, frankly states that picketing continued until it was stopped by injunction. It was not the arrest that "chilled" Appellees' alleged constitutional right and destroyed the strike. Until and unless the existing injunction is dissolved or the case reversed on appeal, Appellees cannot engage in further picketing as prior picketing was found to be "coupled with violence".

There have been no arrests or threatened arrests of any of the Appellees by any of the Appellants since the

institution of this lawsuit which is approximately during a period of four years.

The Three-Judge Court below relied on *Dombrowski v. Pfister*, 380 U.S. 479, 483-485 (1965), supra, as authority for entering the arena of state prosecution at the early stages. This reliance apparently ignored the decision of this Court in *Cameron v. Johnson*, 390 U.S. 617 (1968).

Any notion that *Dombrowski*, supra, had opened wide the door to federal court intervention was dispelled in *Cameron*, supra. In *Dombrowski*, supra, the Court there pointed out that the statutes challenged regulated "expression itself", rather than, as in *Cameron*, supra, statutes regulating "conduct which is intertwined with expression". In this respect our case is like *Cameron* and unlike *Dombrowski*. Further it is important to note that in *Dombrowski* the court did not need to decide whether the Anti-Injunction Act, 28 U.S.C. Section 2283, bars an injunction against state criminal proceedings sought under the Civil Rights Act, because it found that the State's proceedings had not been commenced when the federal action was begun. This was also the situation in *Zwickler v. Koota*, 389 U.S. 241 (1967). It was not the situation in *Cameron*, where the arrests were made and charges filed before the federal action began. It is not the situation here. Unless and until the Supreme Court rules to the contrary, actions under the Civil Rights Act should not be regarded as an exception to the Anti-Injunction Act, as indeed has been held by many courts of appeals.

The court below misapplied *Younger v. Harris*, 401 U.S. 37 (1971). *Younger* teaches that federal courts may not enjoin pending state court criminal prosecu-

tion unless the applicant makes a showing of irreparable harm which is both great and immediate. Disclaiming any intent to catalogue exhaustively the situations where irreparable harm can be said to exist, this Court in *Younger* did, however, discuss two fact circumstances which would justify federal court intervention. First, an injunction would be granted by the federal district court to prevent a prosecution undertaken for a purpose of harassment and in bad faith without any expectations of securing a valid conviction. Secondly, the court suggested that, even in the absence of the usual requisites of bad faith and harassment, a "statute might be (so) flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whom ever an effort might be made to apply it," that federal injunctive relief would be available to prevent attempts to prosecute under it. In any case, the harm required to be shown must be comparable to the hard present in the situation described by the court. *Younger* also holds that the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution cannot, by itself, be considered irreparable damage, as that term was used by the court.

The evidence does not reflect that either the Starr County officials or the Texas Rangers, in attempting to enforce the statutes in question knew or had cause to believe that any particular statute was unconstitutional. Certainly, in the absence of any state court holding any of these statutes to be unconstitutional prior to the time of the arrest of the Appellees during the strike, the law enforcement officers, the group from Starr County as well as the Texas Rangers, who are not versed in constitutional law cannot be expected to

know that such statute might be later struck down in federal court.

In the court below Appellees claimed that the officials of Starr County and the Texas Rangers were biased and merely arrested the Appellees to destroy the union. This contention is utterly ridiculous. Even if the officers had hoped to stop union activity, which is untrue, the president of the union testified that picketing continued until the union was enjoined in state court from further picketing because the picketing had been coupled with actual violence.

Members of the union are not above the law merely because of the union membership. The testimony by the various defendants clearly proves that violations of law had occurred prior to each arrest. Appellees' position below was that the law enforcement officers were attempting to destroy the union by arrests on one hand and by criticising the law enforcement officers for not filing complaints on various other offenses and contending that this action of the law enforcement officials indicated that Appellees were not violating other statutes. Certainly if the law enforcement officials were attempting to destroy the union by arrests, arrests would have been made almost daily as the picketing occurred daily. In addition, complaints could have been filed against those arrested under every possible statute where charges could be brought. The true inference to be drawn from the facts that other charges were not filed was that the officers, at the time the arrests were made, were merely trying to uphold the laws of the State of Texas and preserve the peace.

It is submitted that injunctive relief was not proper under the facts and circumstances as revealed above. It could not be presumed that the state courts will not

accord defendants their full federal and state constitutional rights in state court trials. *Walker v. Birmingham*, 388 U.S. 307, 319 (1967); *Harris v. N.A.A.C.P.*, 360 U.S. 167 (1959). The mere possibility of an erroneous application of constitutional standards will not justify federal courts disrupting state proceedings. *Cameron v. Johnson*, supra; *Dombrowski v. Pfister*, supra. The state courts, presumably, would have construed the various statutes involved and applied them in keeping with constitutional principles, and the court below should have assumed that the state courts would do so.

"Principle of comity, of cooperation and of rapport between the two sovereigns," *Texas v. Payton*, 390 F.2d 261, 270 (5th Cir. 1968), strongly suggests that criminal law enforcement should be left to the states, and that except in the most extraordinary circumstances a federal court should not interfere by injunction with pending state proceedings. Deference by the federal courts to the states in this area recognizes that the "state court at least co-equal with federal courts in its duties and responsibilities in the administration of federal constitutional law." Id. at 272.

CONCLUSION

The Three-Judge Federal Court below incorrectly held Section 1 of Article 5154d, Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes and Articles 482 and 439 of the Texas Penal Code to be unconstitutional for the reasons given above. Furthermore, whether these statutes be constitutional or unconstitutional, the court below erroneously, under the principles of federalism, enjoined state officials from enforcing the statutes.

Jurisdiction is clear, and the questions presented are so substantial and of national importance as to require plenary consideration by this Court.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

JOHN M. BARRON
First Assistant

LARRY F. YORK
Executive Assistant

JOE B. DIBRELL
Assistant Attorney General

GILBERT J. PENA
Assistant Attorney General

Attorneys for Appellants

P.O. Box 12548, Capitol Station
Austin, Texas 78711

CERTIFICATE OF SERVICE

I, Gilbert J. Pena, a member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Jurisdictional Statement has been served on counsel for the Appellees by depositing same in the United States Mail, postage prepaid, addressed to Mr. Chris Dixie, Attorney at Law, 609 Fannin Street Building, Suite 401, Houston, Texas 77002, on this the 12 day of February, 1973.

GILBERT J. PENA
Assistant Attorney General

APPENDIX 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CIVIL ACTION

No. 67-B-36

FRANCISCO MEDRANO, KATHY BAKER, DAVID LOPEZ, GILBERT PADILLA, MAGDALENO DIMAS, BENJAMIN RODRIGUEZ, and UNITED FARM WORKERS ORGANIZING COMMITTEE, AFL-CIO,

Plaintiffs,

vs.

A. Y. ALLEE, JACK VAN CLEVE, JEROME PREISS, T. H. DAWSON, DR. RENE SOLIS, RAUL PENA, ROBERT PENA, JIM ROCHESTER, B. S. LOPEZ, and S. H. DENSON,

Defendants.

Dixie, Wolfe & Hall, Chris Dixie, Robert E. Hall, and George C. Dixie of Houston, Texas, Attorneys for the Plaintiffs

Crawford Martin, Attorney General of Texas, Hawthorne Phillips, Allo B. Crow and Gilbert Pena, Assistant Attorneys General of Texas, and Atlas, Schwarz, Gurwitz & Bland, Gary Gurwitz of Mc-

Allen, Texas, Luther E. Jones, Jr., Corpus Christi, Texas, Frank R. Nye, Jr., Rio Grande City, Texas, Attorneys for Defendants

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Before BROWN, Chief Judge
United States Court of Appeals
GARZA, District Judge, and SEALS, District Judge

OPINION OF THE COURT

SEALS, District Judge:

From June, 1966, until June, 1967, the United Farm Workers Organizing Committee, AFL-CIO, was engaged in an effort to encourage the predominantly Mexican-American farm laborers of the lower Rio Grande Valley of Texas to join with the union in obtaining greater economic benefits for this class. The individual plaintiffs herein were at various times associated or in sympathy with this movement. In pursuit of their objectives, strikes were called; and picket lines, rallies and demonstrations were employed to enlist nonunion laborers in the common cause. These activities, and the responses triggered thereby, resulted in a controversy characterized on both sides by strong emotions and sometimes violent reactions. During this period supporters of the strike came into open conflict first with local and later state authorities, which led to numerous arrests and the initiation of prosecutions under various state laws. Finally, all picketing in support of the strike was enjoined by a state district court.

I. STATEMENT OF THE CASE

Plaintiffs have brought this suit against certain Texas Rangers, officers of the State of Texas, and other public officials of Starr County, Texas, seeking declaratory and

injunctive relief. The suit was filed as a class action by plaintiffs on behalf of those similarly situated; it is properly maintainable as such pursuant to Rule 23(a) & (b)(2) of the Federal Rules of Civil Procedure.

It is asserted that jurisdiction of the court over this complaint arises under Sections 1343, 2201, 2202, 2281 and 2285 of Title 28, United States Code, Sections 1983 and 1985 of Title 42, United States Code; and the First and Fourteenth Amendments to the Constitution of the United States. The complaint seeks declaratory and injunctive relief in an attack on the constitutionality of certain state statutes, and an injunction is sought restraining defendants from enforcing these statutes against plaintiffs and their class. The complaint also alleges that defendants, as state officials acting under color of state law, conspired and did deprive plaintiffs of their civil rights, privileges and immunities protected by the laws and Constitution of the United States.

The disputed issues of fact and law were presented to the court, arguments of counsel have been heard and their briefs considered. The following constitutes the Findings of Fact and Conclusions of Law of this Court.

The first matter to be determined is the effect of *Younger* v. *Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) and its companion cases[1] upon this litigation. *Younger* is not an abdication of the federal role in protecting citizens from "official lawlessness." It is a simple restatement of what has always been the law, namely, that a state criminal prosecution begun in good faith will not be enjoined, even on constitutional grounds by a federal court, except under extraordinary circumstances where the danger of irreparable injury is both great and immediate. *Fenner* v. *Boykin*, 271 U.S. 240, 243-244 (1926);

Douglas v. *City of Jeannette*, 319 U.S. 157, 163-164 (1943).[2] In *Younger* the Supreme Court followed this long standing doctrine and held that a good faith prosecution under a possibly unconstitutional statute should not be enjoined absent special circumstances.[3] This result was predicated on two grounds: Comity (the respect for the judicial processes of the States) and equity (the existence of an adequate remedy at law). 401 U.S. 37 at 43-44. It is also clear from *Younger* that *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965) is still the law, and that bad faith prosecution is the type of immediate and irreparable harm which justifies federal intervention to protect federally secured rights. 401 U.S. 37 at 48-49. See, *The Supreme Court*, 1970 Term, 85 Harv.L.Rev. 40 at 301-315 (1971).

Where a plaintiff seeks to enjoin the enforcement of a state law, have it declared unconstitutional, and enjoin pending and further prosecutions under that law, and where his allegations are sufficient to invoke the equity jurisdiction of a federal court to protect federally secured rights, the three judge federal district court is required to examine the pleadings and proof in order to make the necessary findings on "bad faith prosecution," "harassment," and "irreparable injury" prior to granting or denying the requested relief. *Dyson* v. *Stein*, 401 U.S. 200 (1971), *Byrne* v. *Karalexis*, 401 U.S. 216 (1971). It is to this inquiry that we now direct our attention.

II. THE FACTS SUPPORTING THE GRANTING OF INJUNCTIVE AND DECLARATORY RELIEF

This panel was convened in Brownsville, Texas, and heard evidence presented by both parties concerning all phases of the controversy. Our evaluation of this evidence must be a general one—an appraisal of the circumstances as a whole. These findings in no way constitute

conclusions by this Court as to whether plaintiffs are guilty or innocent of the various offenses for which they were arrested. The reach of our appraisal embraces a constitutional evaluation of the defendants' activities throughout the strike; it attempts nothing more.

Five of the defendants are Texas Rangers, employees of the State of Texas and residents of Dimmitt County, Texas. Defendant Solis is the Sheriff of Starr County, Texas, and defendants Raul Pena and Roberto Pena are Deputy Sheriffs of that county. One of the defendants is a Justice of the Peace of Starr County, Texas, Precinct No. 1. Defendant Jim Rochester is a Special Deputy in the Starr County Sheriff's Department and a resident of Starr County. This defendant at all times material to this action was also employed by one of the privately owned farms in Starr County in a managerial capacity. Plaintiffs contend that these defendants, acting in concert, unlawfully combined and conspired to deprive them of their civil rights.

The United Farm Workers Organizing Committee, AFL-CIO, instituted the strike on June 1, 1966, in an attempt to organize farm workers in Starr County. The strike lasted about thirteen months and received State and nationwide publicity, particularly during the period in which a Senate Investigating Committee held hearings in the area. In furtherance of the strike, picketing occurred every day (with the exception of Sundays) until enjoined by a State District Court. During the strike there was destruction of property belonging to the farms and property of the Missouri-Pacific Railroad Company. There were also acts of violence and threats of violence. In one instance a railroad bridge was partially destroyed by fire. Although it is inferred by defendants that this destruction and violence was caused because of the strike

and by those in sympathy with it, no evidence was presented specifically in this respect. It was allegedly because of this that the Missouri-Pacific Railroad and Starr County officials requested the aid of Texas Rangers in order to preserve law and order. During this period State and local authorities made arrests on fifteen occasions in Starr County. On two occasions arrests were made in Hidalgo County and on some occasions in Cameron County. These out-of-county arrests were allegedly made because of attempted interference with the railroad's normal operation of trains in those counties.

This Court has carefully evaluated the evidence which counsel for both parties so ably presented, and we are confident that this evidence taken as a whole has provided us with the requisite perspective for determining plaintiffs' harassment charges. The record is long and involved and a lengthy summary and analysis of it all is not necessary. Our overall evaluation of the nature of defendants' actions is illustrated by the following specific incidents.

On June 8, 1966, Eugene Nelson, one of the strike's principal leaders was at the Roma, Texas, International Bridge between Mexico and the United States attempting to persuade laborers from Mexico to support the strike by refusing to work for the farms in the United States. Nelson was taken into custody by a Deputy Sheriff of Starr County and transported to the Courthouse in Rio Grande City where he was detained for some four hours without charges being filed against him. During this time he was taken before the County Attorney of Starr County who questioned him about his activities in regard to the strike and informed him that he would be under investigation by the Federal Bureau of Investigation concerning an alleged threat to blow up the Courthouse and

to destroy the buses being used by local farms to transport Mexican laborers to work.

On October 12, 1966, approximately twenty-five union members and sympathizers were picketing along the side of U. S. Highway 83 adjacent to the Rancho Grande Farms. Many of them were exhorting the laborers in the field to join the strike and one of them was using a bull horn. At the request of farm officials, Deputies of Starr County arrived and ordered the pickets to disperse. Raymond Chandler, one of the union leaders, left his automobile and engaged Deputy Raul Pena in conversation concerning the validity of the order. He was arrested by Pena "because he started talking to me, you know, in very loud and vociferous language so I arrested him, yes, sir." None of the others were arrested, because they obeyed the order to disperse. Although Raul Pena testified that Chandler and the others were using abusive and vulgar language, the complaint later filed against Chandler shows that the words "obscene language, vulgar language, indecent language, swearing and cursing, yelling and shrieking, exposing the person, and rudely displaying a weapon" had been deleted. This indicates that the union people were engaging in peaceful picketing along the highway right-of-way when ordered to disperse. There is no evidence that the exhortations from the pickets were disturbing or disrupting the work in the fields, but only that it annoyed the crew leaders and managers of the laborers.

After his arrest, Chandler was taken to the Courthouse in Rio Grande City and a complaint for violation of Article 474 of the Texas Penal Code was filed against him. Bond was set in the amount of $500. The maximum punishment for violation of Article 474 is a $200 fine. At that time two of Chandler's friends came to the

courthouse to make bond. The evidence is uncontroverted that they were verbally abused by the Deputies and were told by Deputy Raul Pena that since they were not lawyers that they had no business in the Courthouse and that if they did not leave they would be placed in jail. Upon hearing this, they left.

Several days later, on October 24, 1966, the President of the Union in Starr County, Domingo Arrendondo, and several others were in the Courthouse under arrest. While in a hall they shouted "viva la huelga" in support of the strike. A Deputy Sheriff immediately struck Arredondo in the face, pushed him backwards and then pointed his gun at the Union President's forehead ordering him not to repeat those words in the Courthouse. The Courthouse, he said, was a "respectful place." This action apparently subdued the arrestees.

On November 3, 1966, members of the union picketed certain produce packing sheds located on the Missouri-Pacific Railroad tracks near U. S. Highway 83 outside of Rio Grande City. This was at about the time that green pepper and lettuce crops were being harvested in that area for shipment to points outside the Rio Grande Valley. The County Attorney of Starr County, after consulting with members of the staff of the Attorney General of Texas, drafted a complaint against ten union leaders and sympathizers charging a violation of Article 5154(f), the Texas secondary picketing statute. This complaint was filed by Deputy Roberto Pena on November 9, 1966. Prior to this time, following the burning of a railroad bridge, the County Attorney had requested law-enforcement assistance from the Governor and the Department of Public Safety. Several Texas Rangers under the command of Captain A. Y. Allee were sent to the area around LaCasita Farms. On November 9th the warrants of arrest for the

November 3rd violation of Article 5154(f) were served by the Rangers. One of those taken into custody by the Rangers was Reynaldo De La Cruz. The evidence is undisputed that while he was under arrest, two Rangers advised him that he could work for the La Casita Farms for $1.25 an hour (the wage demanded by the union at that time) and later on they could organize a more peaceful union. De La Cruz was further advised that the Rangers were there to break the strike and would not leave until they had done so.

Another instance of selective law enforcement occurred at the Starr County Courthouse about 9:30 in the evening on January 26, 1967. Earlier in the day five union members had been arrested along the Rio Grande while trying to convince employees of Trophy Farms to join the Union. That evening approximately twenty union supporters gathered at the courthouse and conducted a prayer vigil for the apparent purpose of protesting the arrests and demonstrating union solidarity. Two members of the group, Reverend James Drake and Gilbert Padilla, mounted the courthouse steps and engaged in prayer. Responding to the jailer's report that a crowd had gathered, Deputy Raul Pena arrived and ordered the group to leave the courthouse grounds. They did so, but Drake and Padilla remained on the steps. Deputy Pena then arrested them for unlawful assembly. From the testimony of witnesses and stipulations of the parties it appears that the courthouse grounds had been used in the past for night rallies and dances, some of which took place at this entrance and some at the opposite entrance. These events were staged under the aegis of either permit or custom and occurred without incident. While a permit was not obtained by this union group, it is plain that permits were not required for all such gatherings. The hour was

not late. The group was not large. The activity was peaceful and did not endanger public safety. The participants left in an orderly manner when requested to do so. The record is clear that the union's nocturnal meeting was treated differently from other gatherings which were more frivolous and raucous in nature. The enforcement exhibited here is reminiscent of that encountered in *Fowler* v. *Rhode Island*, 345 U.S. 67, 73 S.Ct. 526, 97 L.Ed. 828 (1953), and can only be characterized as "biased" or "selective."

The Court recognizes that the courthouse jail contained five union men as prisoners and that the community was becoming restive. However, it seems that the situation could have been controlled by more observation instead of abrupt action which broke up a peaceful assembly.

On February 1, 1967, Jim Rochester, a manager of La Casita Farms who was also a special deputy of Starr County, received a radio message that union people were in or close by the field in block 55 of La Casita Farms. One side of block 55 is bordered by a private road maintained by the farm. On one side of the road are the La Casita fields and on the other side is private property owned by a Thomas Bazan. Rochester drove down this road and observed a number of people standing on the Bazan property, others in the road and on the edge of the La Casita field. As he drove past them on the road the people all moved back onto the Bazan property away from La Casita. Rochester called his office and had his timekeeper notify the Sheriff's office. Rochester observed the people shouting to about fifty or sixty laborers in the field and although he could not understand them, he assumed they were soliciting the laborers to stop work. Shortly thereafter two deputies arrived and on ascertaining that the group was made up

of union members and sympathizers engaged in exhorting the laborers to join the strike, arrested nine of them. Five of this number were Roman Catholic Priests wearing clerical collars. At the time of their arrest two demonstrators ran into the brush on the Bazan property. Rochester, acting in his capacity as a special deputy, gave chase and captured one of them. The deputies then took all of those in custody to the Courthouse where they were charged with disturbing the peace. At the Courthouse they were informed by the Justice of the Peace on instructions from the County Attorney that if they ever appeared in that Court again under the same charge they would be placed under a peace bond and if the bond was not met they would be placed in jail. The evidence does not show that the demonstrators did any more than shout at the laborers in the field, who at the time of the arrest were some hundred yards away and working away from them. The substance of the exhortation was to the effect that the workers were slaves and that they should quit work. Rochester testified that he did not tell the deputies he wanted any particular charges filed or that he wanted the group arrested for trespassing on La Casita property.

On the morning of May 11, 1967, several of the union leaders were at the Camargo International Bridge with several Texas Rangers and Captain Allee. The union people were picketing the bridge where Mexican laborers were being brought into the United States by bus to work on the farms. At that time Captain Allee informed the strikers that he could get them all a job for a dollar and a quarter an hour within the next ten minutes.

On the next day, May 12, 1967, pickets gathered on private property adjacent to La Casita Farms. At the request of La Casita, Captain Allee, four Rangers and two

Deputy Sheriffs drove to the area. The evidence is in dispute as to whether Allee instructed the pickets not to converse with the laborers in the fields. However, the Rangers made a thorough investigation in order to determine whether or not the pickets were on the property adjacent to La Casita with the permission of its owner, a Mr. Solis. Captain Allee then checked to make certain that the pickets were at least fifty feet apart and in accordance with Article 5154(d). After picketing a short time under the watchful eye of the officers, the pickets attempted to leave, but found that the county-maintained road separating the Solis and La Casita properties was blocked by one of the Sheriff's automobiles. The pickets were detained by a Deputy Sheriff until he determined that they had Captain Allee's permission to leave the area.

Later that same day, Eugene Nelson was arrested and charged with threatening the life of certain Texas Rangers. While he did not take the "threat" seriously, Captain Allee directed that charges be filed to protect the Rangers from censure if something happened to Nelson. Later in the day, a Friday, an attorney tendered to the Deputy Sheriff Raul Pena a bond in the appropriate amount signed by a Joseph Guerra as surety. Although the deputy personally knew Guerra to be a well known land owner and person of substance in Starr County that had acted as surety on the bonds in the past, he refused to accept the bond until the following Monday when tax records reflecting land ownership were shown to him. The evidence is clear that there was no valid reason for not accepting the bond on Friday when it was tendered.

On May 26, 1967, fourteen pickets were arrested in two groups at Mission, Texas. They were initially charged with trespassing on private property, but this charge was

later changed to unlawful assembly. Three days later these charges were superseded by secondary picketing and boycott charges filed by agents of the Missouri-Pacific Railroad. The first group of ten persons was arrested by Texas Rangers when they allegedly attempted to block a train carrying produce from the Valley. Later that evening the Reverend Edgar Krueger, a leader of the strikers, and three others arrived and began trying to organize other pickets. As another train passed through, Krueger and another union member, Magdaleno Dimas, were placed in custody by the Rangers. After being arrested, Krueger and Dimas were taken toward the passing train and the evidence confirms that as they waited for it to pass, the Rangers held both of their prisoners' bodies so that their faces were only inches from the train. Two others were also arrested, including Mrs. Krueger. During the arrests, Rangers confiscated cameras being used by union people to photograph the event. Although the evidence is disputed as to whether the first arrest of ten pickets was justified under the circumstances, it is clear that the second arrest of Mr. and Mrs. Krueger was not. At best it appears that Krueger urged Allee to arrest him since he had arrested the others and the Ranger complied. Krueger was not on the tracks, but had been urging bystanders to resume the picketing. Mrs. Krueger was charged with secondary picketing although the evidence is undisputed that she was arrested either for taking a picture of her husband's arrest or attempting to strike Captain Allee with her camera in her husband's defense. After the arrest the prisoners were roughly handled by the Rangers, and Krueger was advised that he should stop his picketing and strike activities as such activities were not consistent with his ministerial functions.

This second arrest is all the more peculiar, because the testimony of the arrestees and the officers shows that

the four did not have signs and were not picketing or physically blocking the track, but were trying unsuccessfully to encourage bystanders to picket. Simply put, the only justification for the second arrest was that Rev. Krueger and his companions were encouraging persons to picket. The record also shows that they were charged with secondary picketing and boycotting upon the complaint of Sam Rogers, a Special Agent of the railroad. (Pltf. Ex. 7.20C). However, Rogers was not present at this second incident as he had gone to the county seat to make a complaint against the first ten arrestees. When solicited by the officers to make the complaint against the Kruegers, Dimas and Adair, he did so without any knowledge whatsoever of the events which precipitated the arrests. (Tr. 703-705). Similarly, on December, 28, 1966, Deputy Sheriff Raul Pena had filed charges against Reynaldo De La Cruz for impersonating an officer by wearing a badge in and around the Union Hall, without ever seeing the offense. (Tr. 634). The badge in question was of the shield-type, while the badges worn by the deputies and Rangers are stars. In answer to interrogatories Pena indicated that he was aware that De La Cruz and Pedro Dimas had worn similar badges when directing traffic at union functions.

On May 31, 1967, four carloads of Texas Rangers and Deputy Sheriffs arrived at La Casita Farms. At that time ten pickets had put their signs away and were resting in the shade of their cars which were parked along side the county road. The evidence is in dispute as to whether the pickets were shouting to the laborers in the fields. Three other pickets, two men and a woman, were farther down the road, using a loud speaker to exhort the workers to join the union. At the same time a truck owned by La Casita was playing music over a loud speaker to drown out the words of the pickets. There was no in-

terference or obstruction of any traffic on the road or into the farm. Immediately upon his arriving at the scene, Captain Allee ordered the arrest of all the pickets, including those who were resting beside their cars in the shade. The reason for these arrests was that they were allegedly violating the mass picketing statute and Allee was afraid of violence because the laborers were all carrying knives which they were using in their work.

On the evening of June 1, 1967, two of the named plaintiffs, Magdaleno Dimas and Benjamin Rodriguez, were arrested by Captain Allee after a long search that led to the home of another named plaintiff, Kathy Baker. The Rangers had searched all evening for Dimas to arrest him for allegedly brandishing a gun in a threatening manner in the presence of Special Deputy Rochester at the La Casita Shed. They found him by "tailing" two Union people, William Chandler and Alex Moreno, from the Union Hall to Kathy Baker's house with their car lights turned off. The Rangers had neither an arrest warrant nor a formal complaint on which a warrant could be based, so they put in a radio call for a Justice of the Peace and waited across the road. Dimas soon emerged from the house with Chandler and Moreno. Dimas had just picked upon his .22 rifle which had been leaning on the porch wall, and as the three were leaving the house the Rangers turned on their car headlights and moved toward them with shotguns leveled. Chandler testified that he told Dimas to drop the gun because he was afraid that if the Rangers saw it, they would open fire. Dimas dropped the gun and began to walk back toward the house. Chandler said: "The next thing that happened, I noticed that the Rangers were drawing a bead on Magdaleno. I then yelled, 'Don't shoot.' And they didn't shoot." (Tr. at 335). Dimas ran into the house but the

Rangers did not follow. The Rangers then approached the house and without saying a word, Captain Allee jabbed Moreno in the ribs with the point of his shotgun barrel, grabbed him by the neck and shoved him hard. Both Moreno and Chandler were arrested with no reason given. They were later charged with assisting Dimas to evade arrest. However, by his answers to interrogatories and his own testimony Captain Allee never told these men that he sought to arrest Dimas. Instead, he told them that he was looking for Dimas and wanted to prevent a killing.

When the Justice of the Peace arrived he filled out a search warrant on forms he carried with him. The Rangers then broke into the house and arrested Dimas and Rodriguez in what appears to this Court to be a violent and brutal fashion. Captain Allee admitted that he struck Dimas on the head with his shotgun barrel once, but he testified that neither man was hit or kicked at all except for that one blow. He also testified that both men fell when they attempted to run from the room and collided with a door and each other at the same time.

The following day two physicians examined Dimas and Rodriguez, and on June 6, 1967, Dimas was examined by a third doctor. Their reports reveal a very different picture from Allee's.

Dimas was hospitalized from June 2nd through June 6th. He suffered a brain concussion, multiple bruises on both sides of the neck and other bruises behind his left ear, on his left side, on the right side of his back, on his left forearm and left wrist. Dr. Casso testified that X-ray negatives revealed that Dimas had received a severe blow to the lower right portion of his back causing the spine to curve out of shape away from the impact point. Dimas also sustained a laceration which required four stitches to close.

Rodriguez had cuts and bruises behind his right ear, bruises on his right elbow, on his right upper arm, on the right upper portion of his back and on his right jaw. His left little finger was broken and the nail was torn off.

It is difficult indeed for this Court to visualize two grown men colliding with each other so as to cause such injuries.

It is the opinion of this Court that the superiors of the strike were on several occasions restrained by defendants from lawfully exercising their rights under the Constitution of the United States. By their words and actions both local and State authorities exhibited their personal bias and opinions against the strikers and their cause. The most striking evidence of this was the regular distribution of a violently anti-union newspaper by the Starr County Sheriff's office. Each week some one hundred copies of *LaVerdad* were picked up at the bus station by a deputy in an official car and taken to the Sheriff's office. Thereafter, they were distributed locally by various deputies. Excerpts from this newspaper are included in the appendix to this opinion which illustrate the nature of this publication.

Another example of the attitude of the authorities was their selective enforcement of the laws during the strike. On May 11, 1967, David Lopez, a field representative of the AFL-CIO attempted to talk to Ranger Jack Van Cleve about the strike. Van Cleve refused to speak to him and pushed him backwards with considerable force. The Reverend Mr. Krueger was with him at that time and was also shoved back by Van Cleve. The evidence is indisputed that neither of the men were demonstrating or blocking the road at that time. Both Krueger and

Lopez later attempted to file charges of assault against the officer. The County Attorney of Starr County testified that he "looked into the matter" but felt there was insufficient evidence to go forward with the complaint. It does not appear that any of the bystanders or union people present were interviewed in this regard.

On the other hand, whenever complaints were filed by the officers or others against union activities these charges were always followed by quick action by the local authorities. On December 28, 1966, pickets gathered at the entrance of La Casita; an employee of La Casita, Manuel Balli, was driving a pickup truck into the farm when Librado De La Cruz, one of the pickets, reached through the truck's open window and apparently attempted to grab Balli by his coat. The attempt failed and Balli drove on through the entrance. Deputy Sheriffs immediately arrested De La Cruz and charges of assault were filed in the State Court. It is also of importance to note that this is the strongest evidence presented to the Court of an assault on anyone by union people during the strike.

Looking at the circumstances as a whole, it is the conclusion of this Court that the unjustified conduct of the defendants had the effect of putting those in sympathy with the strike in fear of expressing their protected first amendment rights with regard to free speech and lawful assembly. The conclusion is inescapable that these officials had concluded that the maintenance of law and order was inextricably bound to preventing the success of the strike. Whether or not they acted with premeditated intent, the net result was that law enforcement officials took sides in what was essentially a labor-management controversy.

This is not intended as a white wash of the activities carried on by the union and its sympathizers during this period. In a controversy such as this, it is rare indeed if all the blame can be laid to rest at one doorstep. However, the issue that is presented to this court for determination is whether the defendants stepped over the line of neutral law enforcement and entered the controversy on one side or the other. It is the judgment of this Court that such was the case.

III. THE "YOUNGER" TESTS

As noted above in Part I of this opinion, *Younger* v. *Harris, supra,* makes it clear that the principles enunciated in *Dombrowski* v. *Pfister, supra,* for the enjoining of state criminal processes in the protection of free speech do not apply where the only danger, real or imagined, is the "chilling" of free expression incidental to the good faith prosecution of violations of state penal provisions, even where those laws are facially unconstitutional. The facts exposed by the record in this case fall short of good faith prosecution and, in the opinion of this Court, amount to irreparable injury to these plaintiffs since they cannot eliminate the threats to their rights as citizens in a single criminal prosecution.

The arrests, detentions without the filing of charges, seizures of signs, dispersals of pickets and demonstrators, the threats of further prosecutions if pro-union activities did not cease, the abuse of the bonding process, and the inducements offered by peace officers to strikers to return to work, disclose a pattern of action by local authorities designed to halt the strike and to discourage attempts to engage in constitutionally protected conduct in support of the strike. The union's efforts collapsed under this pressure in June of 1967 and this suit was filed

in an effort to seek relief. Since that time the union has not engaged in organizational activities. To the extent that the farm workers were forced to abandon activity to better their lot which is protected by the First Amendment they have endured irreparable harm.

Arrests followed by release without the filing of charges prevent those arrested from asserting their constitutional rights in defense of their conduct and obtaining a review of the state law. Similarly, the dispersal of pickets under the threat of arrest effectively prevents a test of the state law and a review of their conduct and that of the police. Multiple recurring arrests under these challenged statutes likewise reduce the efficacy of protecting constitutional rights of free speech and assembly in a single prosecution, since the statutes can be used repeatedly to discourage similar expressions and assemblies even after the successful defense of a single prosecution.

Threatened government reprisals and promised rewards are not susceptible to challenge through the defense of a criminal prosecution. In the former, because the threat is so effective in discouraging the unpopular conduct. In the latter, because no prosecution can result from either the acceptance or rejection of the inducement.

The injury to the plaintiffs' constitutional rights of free speech and assembly is all the more acute, since the tactics do not have to be directed at a particular person in order to diminish his ability to freely express himself. Even though no attempt is made to intimidate him, or if made it is unsuccessful, still his opportunity and ability to be heard and to join with others in pressing for mutual goals is damaged by depriving him of the support of other like-minded persons who are effectively intimidated. It is often difficult to "stand up and be counted." Human

beings like to feel that they are not alone and are reticent to act singly. This is especially so when their ideas are opposed by those in authority. If at Lexington Green all but John Parker had given ground when Major Pitcairn ordered the colonists to disperse, it is doubtful that his stand would have been effective at all.

As a general rule, a litigant may assert only his own constitutional rights or immunities. *McGowan* v. *Maryland,* 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961). However, in order to be exercised with any effect the most important of these rights, because they are communicative, require not only opportunity, but others to whom the exercise can be directed. Thus, freedom of speech includes the freedom to hear, and freedom of the press has the freedom to read as its corollary. Antieu, Modern Constitutional Law (1969), p. 4, §1:1. Similarly, the right to assemble is both a personal and collective right, and abridgement of that right by dissuading others from exercising it effectively curtails its exercise by an individual who is not intimidated.

In so far as the plaintiffs are deprived of this power of cohesion they are injured in the *exercise* of their constitutional rights above and beyond the injury to their individual rights to free speech and assembly in the abstract. While each one may be able to vindicate his conduct by raising his constitutional rights as a defense to a single criminal prosecution, this will not safeguard the collective exercise of those rights or protect the indivdual from further harassment under the circumstances presented here.

In *Duncan* v. *Perez,* 321 F.Supp. 181 (E.D. La. 1970), *aff'd* 445 F.2d 557 (5th Cir. 1971), *cert. den.* 30 L.Ed.2d 254 (1971), the District Court enjoined a re-prosecution

of Gary Duncan, a Negro on a charge of simple battery after his first conviction was reversed for denial of trial by jury. The Court found that the prosecution of Duncan was in bad faith and for the purpose of harassment. In reaching this conclusion the Court noted the multiple arrests of Duncan, the unusually high bond, the unusually high sentence, the demand for double bond, the arrest of his attorney, and the comments and attitude of local officials. These factors indicated that the local authorities had used the criminal process to punish Duncan for his exercise of federally secured rights in the civil rights movement. The District Court gave two other reasons for enjoining the prosecution: the non-existence of a legitimate state interest in reprosecuting Duncan; and the deterence and suppression of the exercise of federally secured rights by Negroes in Plaquemines Parish if Duncan was brought to trial again. On appeal, the Court of Appeals affirmed and held that under *Younger* v. *Harris*

> "an individual is not entitled to federal injunctive relief against a state prosecution which has been instituted by state officials in good faith unless irreparable injury to the state court defendant (as shown in *Dombrowski* v. *Pfister*, 1965, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22) can be established. On the other hand, should the state court defendant be able to establish that the state prosecution has been instituted *in bad faith and for the purposes of harassment* . . . irreparable injury need not be shown provided there is present a basis for federal jurisdiction, e.g., Title 28 U.S.C., Sec. 1343 and Title 42, U.S.C. Sec. 1983." 445 F.2d 557, 559-560 (5th Cir. 1971). Emphasis in original.

Thus, the requirements of *Younger* v. *Harris* for the enjoining of state criminal prosecutions by a federal court

may be met in one of two ways. Here, we find that these plaintiffs have met both of these tests in that they have established the existence of bad faith prosecutions as well as irreparable injury to their own federally protected rights and those of their class. The bad faith on the part of the local authorities can be seen in facts set out above in Part II and in the discussion of "irreparable injury" in this part. The authorities have prevented the plaintiffs from defending their conduct by causing crowds to be dispersed under threats of arrest, by arresting persons and then releasing them without filing charges, by abusing the bond system, by filing numerous charges against the plaintiffs, by refusing to file complaints made by the plaintiffs, by supporting a private anti-union newspaper, by the comments and threats made to union supporters in custody, union supporters seeking to file charges, union supporters on picket lines, and union supporters engaging in no activity whatsoever, all for the purpose of breaking up the strike and preventing persons from advocating support for the strike and its principles. The police authorities were openly hostile to the strike and individual strikers, and used their law enforcement powers to suppress the farm workers' strike.

Having determined that the prosecutions involved here were instituted in bad faith and for the purpose of harassment, that the plaintiffs' exercise of their constitutional rights has been irreparably injured, and that the situation is one in which the defense of the State's criminal prosecutions cannot adequately vindicate those rights, we now move on to a consideration of the various Texas statutes which provide the basis for the charges against the plaintiffs.

IV. THE CHALLENGED TEXAS STATUTES

The next matter to be determined is whether Articles 5154d §1 and 5154f of Vernon's Texas Civil Statutes and Articles 439, 449, 474, 482 and 784 of Vernon's Texas Penal Code are unconstitutional on their face.

Plaintiff's complaint prays for the entry of a declaratory judgment pursuant to 28 U.S.C. §2201 that these seven Texas Statutes are facially unconstitutionally vague and broad. It is our first duty in response to this prayer to determine whether under the facts "there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."[4] In this Court's judgment, the evidence clearly shows a "substantial controversy." Not only are plaintiffs now facing charges in the Texas courts under these statutes but the evidence shows that these statutes were employed as a tool for the continuous harassment of plaintiffs. The threat of similar acts in the future lingers on. This controversy is ripe for declaratory relief if such is warranted.[5]

Defendants have advanced the position that we should abstain from consideration of the constitutional questions in favor of a State court construction of these statutes. It should be noted that the abstention doctrine should be applied only where "the issue of state law is uncertain." *Harman* v. *Forssenius*, 380 U.S. 528, 534, 85 S.Ct. 1177, 14 L.Ed.2d 50 (1965) and "only in narrowly limited 'special circumstances'." *Zwickler* v. *Koota*, 389 U.S. 241, 248, 88 S.Ct. 391, 19 L.Ed.2d 444. Abstention is especially inappropriate where a statute is attacked for facial invalidity in light of the First Amendment. *See*, *Baggett* v. *Bullitt*, 377 U.S. 360, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964) and *Wisconsin* v. *Constantineau*, 400 U.S. 433, 91 S.Ct. 507, 27

L.Ed.2d 515 (1971). In this Circuit the policy militating against abstention has been stated in this wise:

> ". . .[E]ven if it be assumed that a state court could resolve the overbreadth problems, either by means of 'an acceptable limiting construction readily to be anticipated' or by voiding the statute on its face, abstention is nevertheless inappropriate. In such a situation the state courts would simply be deciding a federal constitutional issue within the framework of construing state law. A primary motive for abstaining—avoidance of constitutional issues—is not served. The issue is simply referred to another forum. The state courts, however, possess no special institutional competence to decide such issues. Since the federal courts are at least as adequate a forum, no real purpose would be served by denying a litigant his choice of a federal forum."
>
> *Hobbs* v. *Thompson*, 448 F.2d 456, 463 (5th Cir. 1971)

Furthermore, this Court has stayed its hand for some four and one-half years. During this time we have not been shown a state interpretation narrowing or voiding these statutes on federal constitutional grounds in the intervening years. If abstention was ever appropriate it is no longer. Since we find no "special circumstances" requiring abstention or further delay, we proceed to the merits of the plaintiffs' constitutional challenge.

The challenge to these statutes requires us to explore the constitutional limitations a state may place on public demonstrations. Picketing, marches, mass protest meetings and other assemblies have long been accorded the protection of the first amendment as "symbolic speech." Nevertheless, demonstrations are subject to greater regulation than "pure speech." *Cox* v. *Louisiana*, 379 U.S. 536,

578, 85 S.Ct. 453, 468, 13 L.Ed.2d 471, 500 (1965) (concurrence of Justice Black). It is our task to evaluate the reasonableness of these Texas regulations.

"Reasonableness" turns on two distinct concepts—"vagueness" and "overbreadth". Vagueness is a notice concept. A statute is considered vague under the Constitution if the meaning provided by its terminology and syntax is not sufficiently understandable to the average person so as to inform him of his rights and duties under the law.[7]

"Overbreadth" has come to mean that a statute is void when a reasonable application of its sanctions could include conduct protected by the Constitution.[8] Where first amendment rights are concerned, the Supreme Court has made it clear that if a statute identifies the legitimate state interests which it regulates, that if a statute places only reasonable regulations on the time, place, manner and duration of activities, and that if a statute impliedly limits the discretion of those who enforce it, then it is not overbroad.[9] More generally, if it can be said of each statute that it supplies the proper criteria and standards to require *objective* enforcement of legitimate state interests, then the Constitution is satisfied. Our application of these principles will begin with Articles 5154d(1) and 5154f—the two statutes attacked by plaintiffs involving picketing.

(A). PICKETING

Any consideration of picketing must begin with *Thornhill* v. *Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). In *Thornhill*, the Supreme Court held that picketing was protected first amendment activity and that it could be limited only if there was a clear danger of substantial evil. The Court's sweeping pronouncements indicated that

the right to picket was very broad. However, in the years since *Thornhill*, the Court has found it necessary to place more limits on picketing, and in the process two distinct standards of regulation have been imposed: one for "public issue" picketing and another for "private issue" picketing. "Public issue" picketing involves publicizing opinions or grievances which are directed at society as a whole—the "civil dissent" demonstrations of today. "Private issue" picketing involves publicizing particular disputes; this class is confined almost exclusively to labor-dispute picketing.

Plaintiffs have attacked the constitutionality of Articles 5154d §1 and 5154f of V.A.T.S. which regulate "public issue" and "private issue" picketing respectively. We will consider Article 5154d §1 first.

ARTICLE 5154d

Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"Mass picketing" as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

> The term "picket" as used in this Act shall include any persons stationed by or acting for and in behalf of any organization for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same, or who by any means follows employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.
>
> The term "picketing," as used in this Act, shall include the stationing or posting of one's person or of others for and in behalf of any organization to induce anyone not to enter the premises in question, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

Thornhill and the cases which followed made it abundantly clear that peaceful "public issue" picketing is protected under the first amendment as "symbolic speech"[10] so long as it is in a location generally open to the public.[11] However, this protection will shield one from arrest only if his picketing does not interfere with legitimate State interests such as the regulation of the flow of traffic on public streets and sidewalks.[12] But the State may regulate only with statutes which are narrowly drawn, and take into account all of the nuances of time, place, manner and duration of public expression and assembly, thereby specifying the evils within the allowable area of State control.[13]

The Supreme Court employed this doctrine in the case of *Cameron* v. *Johnson*, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed. 2d 182 (1968) to approve the Mississippi Anti-Picketing law.[14] The statute was acceptable because it was expressly limited to activity which obstructed or unreasonably interfered with ingress or egress from a building, thereby specifying the evil it was designed to prevent.

Applying these principles to Article 5154d §1 requires only that we compare this statute with a Louisiana Municipal Ordinance found unconstitutional by the United States Court of Appeals for the Fifth Circuit in the case of *Davis* v. *Francois*, 395 F.2d 731 (5th Cir. 1968):

> "It shall be unlawful for more than two (2) people to picket on private property or on the streets and sidewalks of the City of Port Allen in front of a residence, a place of business, or public building. Said two (2) pickets must stay five (5) feet apart at all times and not obstruct the entrance of any residence, place of business, or public building by individuals or by automobiles."

Id. at 732.

In holding the provision void, the Court stated:

> "The present ordinance patently violates . . . [Constitutional] precepts. Its application is sweeping. It restricts 'public issue picketing' and private picketing; it restricts picketing on both the sidewalks and streets; it extends to all kinds of facilities in the city though each may present different considerations; it absolutely limits the number of picketers to two regardless of the time, place or circumstances. In so doing it 'unduly restricts the right to protest' because it does not aim specifically at a serious encroachment

> on a state interest or evince any attempt to balance the individual's right to effective communications and the state's interest in peace and harmony."

Id. at 735.

From *Cameron* and *Davis* it is clear that a statute regulating picketing must specifically identify the type of anti-social conduct it is seeking to prohibit when it authorizes a prohibition of a limitation upon picketing. What has been denominated the "numbers and distance" formula of Article 5154d §1 does not attempt to frame its authorization in the context of an evil to be prevented or a right secured, *e.g.*, to prevent violence or to assure reasonable access to a home or business. Rather the statute establishes a mathematical straitjacket which does not permit law officers or courts to take into account the factual context of a particular picket line. The most recent Texas decisions considering the statute have upheld the formula as a reasonable regulation on picketing, principally because it is not vague. *Geissler* v. *Coussoulis*, 424 S.W.2d 709 (Tex.Civ.App.-San Antonio, 1969, error ref. n.r.e.); *Sabine Area Building Trades Council* v. *Temple Associates, Inc.*, 468 S.W.2d 501 (Tex.Civ.App.-Beaumont, 1971, no writ). In both cases the courts strictly adhered to the statutory numbers and distance definition of "mass picketing." In *Geissler* the Court observed that the statute's formula was capable of rendering "otiose efforts to publicize the facts of a labor dispute by picketing and thus constitute an unreasonable interference with freedom of expression. But this does not require that the statute be relegated to the limbo of unconstitutional legislation. A statute valid as to one state of facts may be invalid as to another. [citations omitted]" 424 S.W.2d at 712. While the statutory standard is precise and objective as to the

number and location of pickets, the section still presents two problems.

First, as observed by the *Geissler* court, strict application of the formula by law officers and courts can yield an unconstitutional restraint on protected First Amendment freedoms. Thus the Texas statute is defective for the same reasons advanced in *Davis* v. *Francois, supra.* Little imagination is required to envisage circumstances where groups of demonstrators, substantially larger than two persons, standing at closer quarters than fifty feet would not threaten the safe flow of traffic nor unreasonably interfere with free ingress or egress from nearby buildings.

Second, the statute condemns obstructions of "any character." Indeed, the injunction upheld in *Sabine Area B.T.C.* v. *Temple Associates, supra,* tracked the statute and prohibited any defined "mass" picketing which constituted or formed "any character of obstacle" to ingress and egress at the picketed site. 468 S.W.2d 501. Thus once a picket comes within the statutory definition, it does not matter whether the picketing is a reasonable or unreasonable obstacle to access, it is forbidden. The statute does not permit the courts to relax its strictures and to decline to issue injunctions where the picketing does not present an unreasonable barrier to access. Nor have the Texas courts seen fit to read this kind of elasticity into the statute. This Court cannot supply such a construction. *United States* v. *Thirty-Seven Photographs,* 402 U.S. 363, 369, 91 S.Ct. 1400, 28 L.Ed.2d 822 (1971). See, *Freedman* v. *Maryland,* 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965) and *Teitel Film Corp.* v. *Cusack,* 390 U.S. 139, 88 S.Ct. 754, 19 L.Ed.2d 966 (1968).

While part two of Section 1 is similar to the language of the Mississippi statute construed in *Cameron* v. *Johnson,*

supra, there the Court allowed the State to prohibit only "unreasonable" obstructions while Texas prohibits "any character" of obstruction to free ingress or egress. This is not the precise and narrowly drawn statute contemplated by the Supreme Court. It commands the policeman to remove any mode of free expression which presents any character of obstruction and this is impermissible.

Further this statute is not narrowed by its own definitions of the terms "picket" and "picketing." Both of these definition-clauses embrace persons who attempt to induce others not to enter the picketed premises. Although not all methods of "inducing" others to change their opinions are protected, the Supreme Court has made it quite clear that demonstrations are legitimate forms of persuasion.[15] The statute is void for overbreadth.

ARTICLE 5154f

Article 5154f is the other challenged picketing statute.[16] It prohibits secondary strikes, secondary picketing and secondary boycotts and therefore falls within the principles of "private issue picketing."

The concept of "private issue" picketing grew, in part, out of a series of decisions by the Supreme Court that retreated somewhat from Thornhill's pronouncements on labor picketing. These cases dealt with the scope of constitutional protection of picketing in the context of State court injunctions. The retreat culminated in the case of *International Bhd. of Teamsters* v. *Vogt*, 354 U.S. 284, 77 S.Ct. 1166, 1 L.Ed.2d 1347 (1957). In *Vogt* the Court was called upon to review the validity of a State court injunction restraining picketing designed to induce the plaintiffs' employees to join a union. Substantial damage had resulted when sympathetic unions refused to make deliveries or

haul goods for the plaintiff. The Court sustained the injunction on the ground that the purpose of the picketing was to violate a valid State policy. Mr. Justice Frankfurter's majority opinion carefully traced the evolution of this principle pointing out the many "reassessments" of the broad pronouncements of *Thornhill*. The "decisive reconsiderations", he writes, came in *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490, 497-98, 69 S.Ct. 684, 93 L.Ed. 834 (1949). In Giboney, union ice peddlers had picketed an ice company in an effort to induce the company to refuse to sell ice to nonunion peddlers. The Court upheld the State injunction against the picketing because "the sole immediate object of the publicizing adjacent to the premises of Empire . . . was to compel Empire to agree to stop selling ice to nonunion peddlers. Thus all of appellant's activities . . . constituted a single and integrated course of conduct, which was in violation of Missouri's valid law." The *Giboney* decision was the unanimous opinion of the Court, and it concluded that the picketing amounted to economic pressure to compel Empire to "abide by union rather than State regulation of trade." *Id.* at 503.

The reassessment process continued in *Teamster's Union* v. *Hanke*, 339 U.S. 470, 70 S.Ct. 772, 94 L.Ed. 995 (1950) and *Building Service Employees* v. *Gazzam*, 339 U.S. 532, 70 S.Ct. 784, 94 L.Ed. 1045 (1950). The majority stated in Gazzam that "an adequate basis for the instant decree is the unlawful objective of the picketing . . . ." But then the Court concluded that *Giboney* controlled and affirmed the case on that basis. Three years later in *Plumbers Union* v. *Graham*, 345 U.S. 192, 73 S.Ct. 585, 97 L.Ed. 946 (1953), the Court found evidence to support the conclusion that a substantial purpose of the picketing was to put pressure on a contractor to fire nonunion workmen and concluded the injunction was not in violation of the First Amendment.

Frankfurter summarized the evolutionary process in *Vogt*:

> "This series of cases, then, establish a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy."

343 U.S. at 293

The Supreme Court has not faced these issues directly since 1957, but the Fifth Circuit has reaffirmed *Vogt* and this Court is bound to its principles.[17]

Article 5154f prohibits persons or groups who establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott as those terms are defined.

Section 2(d) defines "secondary picketing" as the establishing of a picket at or near the premises of any employer where no "labor dispute" exists. Article 5154f defines a "labor dispute" as any controversy between an employer and a majority of his employees. In construing Article 5154f, the Texas Supreme Court has invalidated this definition of "labor dispute"[18] under the authority of *American Federation of Labor* v. *Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855 (1941). The Court stated in Swing that:

> "A State cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him."

Id. at 326.

There can be little doubt that the sanction imposed by Section 2(d) is precisely that which *Swing* held to be inconsistent with the First Amendment. It clearly relies on the absence of an employer-employee relationship and this is impermissible. We, therefore, consider Section 2(d) to be an unconstitutional infringement of freedom of speech.

Section 2(d) defines a "secondary strike" as a temporary work stoppage by the concerted action of two or more employees, of an employer where no labor dispute exists, which results from a labor dispute in which these two employees are not parties. Section 1 prohibits not only participation in a secondary strike but also aiding and abetting a secondary strike. Little imagination is required to visualize an enforcement officer deciding that picketing "aids and abets" secondary strikes. Section 2(b), then, also contains a potential for prohibition of First Amendment rights.

Initially, it should be stated that the term "labor dispute" is also invalid in Section 2(b) as it was for Section 2(d). However, Section 2(b) is not rendered void on this basis alone since without the strict definition of "labor dispute" it is still operable. The statute then prohibits a work stoppage by two or more people which results from a labor controversy to which these two persons are not parties, and picketing could be said to "aid and abet" this by advertising the controversy.

Viewed in this posture, it becomes apparent that the regulation makes irrelevant the picketing's purpose. In order to come within the test of *Vogt,* the statute must require a showing that the purpose of the picketing was to violate a legitimate state policy. Texas has simply stated its policy here and then prohibited anyone from aiding in any manner in its violation. In so doing, the proscription

sweeps in activity which the State is not entitled to prohibt.[19]

Section 2(e) defines a "secondary boycott" as a plan or agreement entered into or any concerted action by two or more persons to cause injury or damage to any person or firm for whom they are not employees. The section then lists the different ways in which this "plan" to "cause injury or damages" may be carried out. Picketing is one of the methods listed. Also, the "aid and abet" clause of section one is again available to prohibit picketing designed to bring about injury or damage by one of the other five methods listed in section 2(e).

Simply stated, Texas has prohibited secondary boycott picketing, the purpose of which is either to cause "injury or damage" or to encourage acts which will cause "injury or damage." These are broad terms; they do not point to specific evils. In each case considered by the *Vogt* opinion in which the State prohibition of picketing was allowed to stand, the specific evil condemned by the State was apparent: urging an employer to hire only union employees, urging an employer to not sell to nonunion salesmen, urging an employer to employ a certain percentage of people from certain races. Such evils are easily discernible.

In *Vogt*, the Court said that there was "a growing awareness that these cases involved not so much questions of free speech as review of the balance struck by a State between picketing that involved more than 'publicity' and competing interests of State policy." 354 U.S. at 290. If this balance is to be struck by written statutes, then there is even more reason to demand clarity of purpose. The Constitution requires that limits on first amendment activity be narrowly drawn and that they isolate the specific evils they are condemning for unless we are "metic-

ulous in that regard, great rights will be lost by the absence of findings, by the generality of findings, or by the vagueness of decrees." *Plumbers Union* v. *Graham*, 345 U.S. 25 204 (Douglas, J., dissenting.)

The evil here is "damage or injury" of any character or degree no matter how slight or subtle. Judicial balance of this sort of "purpose" with the right to freedom of speech would be a haphazard office at best. Section 2(e) is, therefore, unconstitutionally broad.

(B) OBSTRUCTING STREETS

Plaintiffs have also attacked Article 784 of the Texas Penal Code, which prohibits obstructing public streets. It involves many of the same issues as the picketing statutes so it will be considered at this point in the opinion.

ARTICLE 784

> Whoever will wilfully obstruct or injure or cause to be obstructed or injured in any manner whatsoever any public road or highway or any street or alley in any town or city, or any public bridge or causeway, within this State, shall be fined not exceeding two hundred dollars.

This is a clear, precise statute drawn so as to carefully carve out a State interest worthy of protection. The Supreme Court has made it clear that the First Amendment does not protect those who intentionally interfere with traffic safety, and this statute is so limited.[20]

In *Cox* v. *Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471, 484 (1965), Justice Goldberg said:

> "One would not be justified in ignoring the familiar red light because this was thought to be a

means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations."

In the case of *Shuttlesworth* v. *Birmingham*, 382 U.S. 87, 86 S.Ct. 211, 15 L.Ed.2d 176 (1965) the Court considered the constitutionality of a city ordinance which said: "It shall be unlawful for any person or any number of persons to so stand, loiter or walk upon any street or sidewalk in the city as to obstruct free passage over, on or along said street or sidewalk. It shall also be unlawful for any person to stand or loiter upon any street or sidewalk of the city hafter having been requested by any police officer to move on." *Id.* at 88. The Court objected to the second sentence of the ordinance saying that the provisions permitted travel on a sidewalk only at the whim of a police officer. However, the Court held that a State court construction sufficiently narrowed the provision's scope by requiring a showing of an actual traffic blockage.

We consider the word "obstruct" in Article 784 to mean an actual prevention or a substantial interference with traffic; until this prevention of normal conditions occurs, the statute does not operate. Article 784 is, therefore, not contrary to *Shuttlesworth* and is not unconstitutional.

C. BREACH OF THE PEACE

ARTICLE 474

> Whoever shall go into or near any public place, or into or near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek or expose his or her person to another person of the age of sixteen (16) or over, or rudely display any pistol or deadly weapon, in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars ($200).

To answer plaintiff's allegations in regard to Article 474, this Court need not proceed past the case of *University Committee to End the War in Viet Nam* v. *Gunn*, 289 F.Supp. 469 (W.D. Tex. 1968) (Three-Judge Court), appeal dismissed for want of jurisdiction, 399 U.S. 383, 90 S.Ct. 2013, 26 L.Ed.2d 684 (1970). Having been presented with the same questions in regard to Article 474 that now face this Court, the Court in *Gunn* held the statute "impermissibly and unconstitutionally broad." *Id.* at 475. Judge Thornberry's opinion specified two reasons for the holding. The first concerned the words "loud and vociferous":

> "It cannot be doubted that the provision regarding the use of loud and vociferous language would, on its face, prohibit speech which would stir the public to anger, would invite dispute, would bring about a condition of unrest, or would create a disturbance. In so doing, the statute on its face makes a crime out of what is protected First Amendment activity. This is impermissible."

Id. at 474.

The Court also considered the clause "in a manner calculated to disturb" defective since "[i]t leaves wide open the standard of responsibility, relying on 'calculations as to the boiling point of a particular group, not an appraisal of the nature of the comments per se.'" Id. at 475.

This Court is in complete agreement with the principles of the *Gunn* opinion. We therefore consider Article 474 to be unconstitutionally broad.[21]

Plaintiffs have also attacked Article 482 of the Texas Penal Code relating to "Abusive Language."

ARTICLE 482

> Any person who shall in the presence or hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars.

Literally read, the statute makes it a crime for any person to "curse or abuse" another person "under circumstances reasonably calculated to provoke a breach of the peace . . . ." Article 482 is no less a "breach of the peace" statute than Article 474. Both require speech "in a manner calculated to provoke a public disturbance." In *Gunn*, Article 474 was found to be fatally defective because of this requirement; this Court considers Article 482 to be defective for the same reason.

Article 482 comes directly under the principles of *Ashton* v. *Kentucky*, 384 U.S. 195, 86 S.Ct. 1407, 16 L.Ed.2d 469 (1966). In *Ashton* the Supreme Court reversed a conviction under the Kentucky interpretation of common-law libel which prohibited "any writing calculated to create disturbances of the peace . . . ." The Court's decision was

based on the classic doctrine of *Cantwell* v. *Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940):

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others . . . . Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leave to the executive and judicial branches too wide a discretion in its application."

Id. at 308.

Applying this concept to criminal libel, the *Ashton* Court stated:

> "Convictions for 'breach of the peace' where the offense was imprecisely defined were similarly reversed in Edwards v. South Carolina, 372 U.S. 229, 236-238, 9 L.Ed.2d 697, 702, 703, 83 S.Ct. 680, and Cox v. Louisiana, 379 U.S. 536, 551-552, 13 L.Ed.2d 471, 482, 85 S.Ct. 453. *These decisions recognize that to make an offense of conduct which is 'calculated to create disturbances of the peace' leaves wide open the standard of responsibility.* It involves calculations as to the boiling point of a particular person or a particular group, not an appraisal of the nature of the comments per se. This kind of criminal libel 'makes a man a criminal simply because his neighbors have no self-control and cannot refrain from violence.' "

384 U.S. at 200. Emphasis added.

These principles were recently reiterated by the Supreme Court when it considered the Georgia "abusive

language" statute, Georgia Code §26-6303, which provides "any person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." *Gooding* v. *Wilson*, 31 L.Ed.2d 408 (U.S. 1972). Since the Georgia law had not been construed by Georgia courts as being limited to the "fighting words" prohibition permitted by *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942), the law was held to be facially unconstitutional. The Texas statute under consideration here contains the same expansive language unlimited by a narrowing interpretation.[22] Consequently, Article 482 is also void for overbreadth.

(D) UNLAWFUL ASSEMBLY

Finally, it is contended that Articles 439 and 449 are facially unconstitutional.

Chapter One, Title Nine of the Texas Penal Code is entitled Unlawful Assemblies. The chapter's first provision is Article 439 and it defines "Unlawful Assemblies." The remaining twenty-two articles set forth various purposes for which such assemblies may be had and affix various punishments for such unlawful acts.[23] Apparently, the pleader must combine Article 439 with one of the other "offense" articles in the chapter, such as Article 449, in order to frame a complete criminal indictment.[24]

The peculiar method of drafting statutes does not present any unusual problems since our approach to Article 439 does not require that we combine the two statutes or that we even consider Article 449 at all. This Court will assume for purposes of this opinion that Article 449, as

well as the remaining twenty-one articles of Chapter One, Title Nine, provides a legitimate state interest which if reasonably applied would be an acceptable restriction on First Amendment privileges.

ARTICLE 439

> An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him the enjoyment thereof.

This statute in effect provides that an unlawful assembly is a meeting of three or more persons with intent to aid each other to deprive any person in any manner of a right which this Court has assumed the State may legitimately protect.

The statute comes within the principles stated by the Supreme Court in the case of *United States* v. *Robel*, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 588 (1967):

> "The statute quite literally establishes guilt by association alone, without any need to establish that an individual's association poses the threat feared by the Government in proscribing it. The inhibiting effect on First Amendment rights is clear."

This case makes it clear that statutory regulation of assembly must establish standards for identifying a threat to the public which is so important that it justifies inhibiting first amendment freedoms. The Constitution protects those who congregate with others for the purpose of peacefully discussing unlawful pursuits.[25] Any provision regulating assembly must require that an individual intend to

actively further the criminal aims of the assembly[26] and must also demand that before an assembly can be prohibited, these criminal aims must be manifested so as to pose a threat of substantial degree to public order.[27] But, a statute cannot punish assembling with an evil state of mind; it must require this sort of "overt act."

The Texas unlawful assembly statute makes no effort to limit its effect to assemblies which pose a threat to public order.[28] Indeed, quite the contrary is accomplished by condemning not only violence but "any other manner" of effecting the assembly's unlawful purposes.

The phrase "any other manner" breeds another defect. Violence is, of course, not protected by the First Amendment.[29] However, the Court has also ruled that if a regulation's scope covers peaceful as well as violent conduct, the State interest which requires restricting freedom of assembly must be carefully specified and the only reasonable restrictions may be placed on the time, place, duration, or manner of such conduct.[30] The Texas statute's prohibition of assembly by violence is proper, but when it goes on to include non-violent conduct by way of the "any-other-manner" clause without narrowing its impact through reasonable and objectively drawn restrictions as to the time, place, duration, manner and circumstances of assembly, it "sweeps unnecessarily broadly and thereby invade[s] the area of protected freedoms",[31] so that it leaves too much discretion to the enforcer of the statute.[32]

Article 439,[33] along with Articles 474 and 482 of the Penal Code and Articles 5454d §1 and 5154f of the Civil Statutes, is void for overbreadth.

Our decision to invalidate these statutes has involved a careful and cautious balancing of the individual's right

to speak with the right of all citizens to be safe on American streets. The laws that punish those who offend either of these precious rights are continually in need of maintenance and repair. Especially in these times of strife and unrest, the Legislature of this State must be sensitive to the goals of a changing society. Of the five statutes we here declare unconstitutional, *two are twenty-five years old, two have been on the books forty-seven years* and the last one was promulgated *eighty-five years ago.* No longer do they serve the purposes for which they were enacted or the Constitution of the United States.

V. THE RELIEF GRANTED

To summarize, it is the holding of this Court that Article 784 of the Texas Penal Code is not overly broad or vague and is therefore constitutional. However, it is our conclusion that Articles 5154d §1 and 5154f of Vernon's Texas Civil Statutes and Articles 439, 474 and 482 of the Texas Penal Code are unconstitutional and, therefore, null and void. Plaintiffs are entitled to a declaratory judgment to that effect.

In addition, plaintiffs are also entitled to a permanent injunction restraining the defendants not only from any future acts enforcing the statutes here declared void, but also restraining them from any future interference with the civil rights of plaintiffs and the class they represent. *Hairston* v. *Hutzler*, 334 F.Supp. 251 (W.D. Pa. 1971).

The Clerk is directed to file and enter this Opinion and provide counsel for all parties with true copies. By a separate simultaneous directive the parties will be instructed as to the preparation and submission of a decree to effectuate the judgment of the Court; that judgment is not

to be deemed entered until the signing and entry of the formal decree.

Done at Houston, Texas, on this 26th day of June, 1972.

/s/ John R. Brown
John R. Brown, Chief Judge
United States Court of Appeals

/s/ Reynaldo G. Garza
Reynaldo G. Garza
United States District Judge

/s/ Woodrow Seals
Woodrow Seals
United States District Judge

FOOTNOTES

1. Boyle v. Landry, 401 U.S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696 (1971); Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971); Perez v. Ledesma, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701 (1971); Dyson v. Stein, 401 U.S. 200, 91 S.Ct. 769, 27 L.Ed. 2d 781 (1971); Byrne v. Karalexis, 401 U.S. 216, 91 S.Ct. 777, 27 L.Ed.2d 702 (1971).

2. *See*, Academy, Inc. v. Vance, 320 F.Supp. 1357 (S.D. Tex. 1970) for a pre-Younger example of a dismissal for failure to show a bad faith prosecution. *See*, Duncan v. Perez, 321 F.Supp. 181 (E.D. La. 1970), *aff'd* 445 F.2d 557 (5th Cir. 1971), *cert. den.* 30 L.Ed.2d 254 (1971) for a pre-Younger use of *Younger* principles in an action to enjoin re-prosecution where the evidence established that the re-prosecution was in bad faith for purposes of harassment and would deter and suppress the exercise of federally protected rights by Negroes in Plaquimines Parish.

3. Justice Brennan, the author of *Dombrowski*, concurred in *Younger* because of Harris' failure to allege a bad faith prosecution. Failing this, Harris' constitutional contentions could be adequately handled by the state court. That *Dombrowski* is in harmony with the "rule" of *Younger* can be seen in Justice Brennan's opinion for the Court in Cameron v. Johnson where he stated: *"Dombrowski* recognized, 380 U.S. at 483-485, the continuing validity of the maxim that a federal court shall be slow to act 'where its powers are invoked to interfere by injunction with threatened criminal prosecutions in a state court', ... Federal interference with a State's good-faith administration of its criminal law 'is peculiarly inconsistent with out federal framework' and a showing of 'special circumstances' beyond the injury incidental to every proceeding brought lawfully and in good faith in requisite to a finding of irreparable injury sufficient to justify the extraordinary remedy of an injunction. 380 U.S. at 484. We found such 'special circumstances' in Dombrowski . . . . In short, we viewed *Dombrowski* to be a case presenting a situation of the 'impropriety of [state officials] invoking the statute in bad faith to impose continuing harassment in order to discourage appellants' activities . . . .' 380 U.S. at 490." 390 U.S. 611, at 618-619.

4. Golden v. Zwikler, 394 U.S. 103, 118, 89 S.Ct. 956, 22 L.Ed.2d 113 (1969), quoting, Maryland Casualty Co. v. Pacific Oil Co., 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941). *See also* Zwikler v. Koota, 389 U.S. 241, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967).

5. Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971), applies the Younger v. Harris injunction requirement to the area of declaratory judgments. These prerequisites for considering both injunctive and declaratory relief are met here.

6. *E.g.*, Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 451 (1965). *See also*, Fortas, Concerning Dissent and Civil Disobedience, 7-25 (1968).

7. The classic definition of "vagueness" comes from Connally v. General Construction Co., 269 U.S. 385, 391, 46 S.Ct. 126, 70

L.Ed. 322 (1926); "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process . . . ." *See,* Cameron v. Johnson, 390 U.S. 611, 615-16, 88 S.Ct. 1335, 20 L.Ed.2d 683 (1968); Zwikler v. Koota, 389 U.S. 241, 249, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967); Ashton v. Kentucky, 384 U.S. 195, 200-201, 86 S.Ct. 1407, 16 L.Ed.2d 469 (1966); Edwards v. South Carolina, 372 U.S. 229, 238, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); Wright v. Montgomery, 406 F.2d 867 (5th Cir. 1969). *See generally,* Amsterdam, The Void for Vagueness Doctrine, 109 Pa. L. Rev. 67 (1960).

8. In Zwickler v. Koota, 389 U.S. 241, 250, 88 S.Ct. 390, 19 L.Ed.2d 444 (1967) the Court said "overbreadth . . . offends the constitutional principle that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.' NAACP v. Alabama, 377 U.S. 288, 307, 12 L.Ed.2d 325, 338, 84 S.Ct. 1302." *See* Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931); Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); Cantwell v. Connecticut, 310 U.S. 296, 304-7, 60 S.Ct. 900, 84 L.Ed. 1213 (1941); Schneider v. State, 308 U.S. 147, 161, 60 S.Ct. 146, 84 L.Ed. 155 (1939); Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965); University Committee To End War in Viet Nam v. Gunn, 289 F.Supp. 469, 473-74 (W.D. Tex. 1968) (Three-Judge Court), appeal dismissed want of jurisdiction, 399 U.S. 383, 90 S.Ct. 2013, 26 L.Ed.2d 684 (1970). *See generally,* Amsterdam, The Void For Vagueness Doctrine, 109 Pa. L. Rev. 67 (1960).

9. *See,* Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 452, 13 L.Ed.2d 471 (1965); Shuttlesworth v. Birmingham, 394 U.S. 147, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969); Gregory v. Chicago, 394 U.S. 111, 89 S.Ct. 946, 22 L.Ed.2d 134 (1969); Note, Regulation of Demonstrations, 80 Harv. L. Rev. 1773, 1773-74 (1967).

10. *See,* Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965); Cameron v. Johnson, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed.2d 182 (1968). *See generally,* Brown v. Louisiana, 383 U.S. 148, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966); Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

11. *See,* Amalgamated Food Employers Union v. Logan Valley Plaza, Inc., 391 U.S. 308, 88 S.Ct. 1601, 20 L.Ed.2d 603 (1968); Adderly v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 140 (1966).

12. *See,* Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 656, 82 L.Ed. 949 (1938); Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939); Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); Cox v. New Hampshire, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); Poulos v. New Hampshire, 345 U.S. 395, 73 S.Ct. 760, 97 L.Ed. 1105 (1953); Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); Shuttlesworth v. Birmingham, 382 U.S. 87, 86 S.Ct. 211, 15 L.Ed.2d

176 (1965); Cameron v. Johnson, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed.2d 182 (1968). *See generally,* Fortas, Concerning Dissent and Civil Disobedience, 12-25 (1968).

13. *See,* Thornhill v. Alabama, 310 U.S. 88, 97, 60 S.Ct. 736, 84 L.Ed.2d 1093 (1940), where the Court condemned a statute which prohibited almost all picketing. The Court stated that the regulation "does not aim specifically at evils within the allowable area of State control, but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of press." *See also,* Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); Cameron v. Johnson, 390 U.S. 611, 88 S.Ct. 1334, 20 L.Ed.2d 182 (1968); Davis v. Francois, 395 F.2d 731 (5th Cir. 1968); Note, Regulation of Demonstrations, 80 Harv. L. Rev. 1773, 1773-74 (1967).

14. The Mississippi Anti-Picketing Law, 2A Miss. Code Ann. §2318.5 (Sup. 1966), provided:

> "1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi, or any county or municipal government located therein, or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or unreasonably interfere with free use of public streets, sidewalks, or other public ways adjacent or contiguous thereto."

15. *See,* Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965); Cameron v. Johnson, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed.2d 182 (1968).

16. Art. 5154f. Secondary strikes, picketing and boycotts prohibited

Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

Section 2. As used in this Act:

a. The term "labor union" means every association, group, union, national and local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing in part for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner, and shall include the local, state, national and international affiliates of such organizations or unions.

b. "Secondary strike" shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

c. The term "picket" shall include any person stationed by or acting in behalf of any organization for the purpose of inducing anyone not to enter the premises in question; or for apprising the public by signs, banners, or other means, of the existence of a labor-dispute at or near the premises in question; or for observing the premises so as to ascertain who enters or patronizes the same; or any person who by any means follows employees or patrons of the place being picketed either to or from such place so as to either observe them or to attempt to persuade them to cease entering or patronizing the premises being picketed.

d. The term "secondary picketing" shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

e. The term "secondary boycott" shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damages to any person, firm or corporation for whom they are not employees, by

(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

(2) Picketing such person, firm or corporation; or

(3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or

(4) Instigating or fomenting a strike against such person, firm or corporation; or

(5) Interfering with or attempting to prevent the free flow of commerce; or

(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor-dispute.

f. The term "employer" means any person, firm or corporation who engages the services of an employee.

g. The term "employee" shall include any person, other than an independent contractor, working for another for hire in the State of Texas.

h. The term "labor dispute" is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act.

17. Judge John R. Brown writing for the Fifth Circuit in Burr v. N.L.R.B., 321 F.2d 612, 621 (5th Cir. 1963) stated:

> "Notwithstanding sweeping and earlier broad pronouncements in terms of free speech, it is now recognized that Congress or the states may in enforcing a valid public policy, 'constitutionally enjoin peaceful picketing aimed at preventing effectuation of [a policy against coercive restraints against employers] . . . .'" *See also,* Wooten v. Ohler, 303 F.2d 759, 764 (5th Cir. 1962).

18. *See,* Dallas General Drivers v. Wamix, 295 S.W.2d 873 (Tex. 1956); Construction and General Labor Union v. Stephenson, 225 S.W.2d 958 (Tex. 1950); International Union of Operating Engineers v. Cox, 219 S.W.2d 787 (Tex. 1949); Ex Parte Henry, 215 S.W.2d 588 (Tex. 1948).

19. Thornhill v. Alabama, 310 U.S. 88, 97 60 S.Ct. 736, 84 L.Ed. 1093 (1940).

20. It has been argued that a State or municipality may restrict its streets completely to traffic. *See* Cox v. Louisiana, 379 U.S. 536, 55 n.13, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965).

21. Since the submission of this case the Texas Legislature has amended Article 474 of the Penal Code to define eleven instances of punishable "disorderly conduct." Acts 1969, 61st Leg., p. 1510, ch. 454, §1, emerg. eff. June 10, 1969. The amended statute, for the most part, is aimed at violent *behavior,* such as interference with public meetings and speakers, and with judicial and legislative proceedings. As such it is a very different statute from the old Article 474, under consideration here, which makes speech itself an offense. The validity of the new statute is not before this Court since the plaintiffs are not charged with its violation, nor can they be, because of the *ex post facto* provisions of the federal and state constitutions. However, the old statute is still in existence for the purposes of any pending prosecutions and the challenge to its validity is not mooted by the enactment of the new article.

22. The only decision which approximates the *Chaplinsky* doctrine is *Deaton* v. *State,* 110 S.W. 69 (Tex.Crim.App. 1908) where it was stated that "the purpose of the statute [is] both to discourage and punish the use of abusive language in respect to matters in controversy, the effect of which would and might be to provoke breaches of the peace and to cause bloodshed." Id. at 70. In *Deaton* the defendant's offense had been to swear at a trespasser, who was gathering pecans on the defendant's property, in the presence of the trespasser's sisters. In *Bumgarner* v. *State,* 142 S.W. 4 (Tex.Crim.App. 1911) the defendant had driven his stepdaughters from his house by calling them "liars," "bitches," and "whores" to their faces. In *Easter* v. *State,* 160 S.W. 74 (Tex.Crim.App. 1913) the unfortunate defendant had had the temerity to call a man a "liar" when he accused the defendant of not paying a debt. The fellow walked away and then returned with a plank with which he beat the defendant breaking his collar-bone. The defendant's conviction was affirmed. The only post-Chaplinsky case, Duke v. State, 328 S.W.2d 1189 (Tex.Crim.

App. 1959) makes no mention of the "fighting words" limitation. It is obvious that the statute's purpose, as written and interpreted, was to protect the ears of a more innocent age and that its scope is much wider than the "fighting words" coverage permitted by *Chaplinsky*. The *Chaplinsky* "fighting words" exception itself has been criticized as a concept "so vague that no lawyer can adequately guide his client contemplating a public speech." Antieau, Modern Constitutional Law (1969), §1:7, p. 23.

23. Art. 449. To Prevent any person from pursuing his labor.

If the purpose of the unlawful assembly be to prevent any person from pursuing his labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars.

24. Ex Parte Bracey, 152 S.W. 2d 763, 764 (Tex.Crim.App. 1941).

25. Brandenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969). *See,* Hunter v. Allen, 286 F.Supp. 830, 836-37 (N.D. Ga. 1968): "The court is constrained to believe that the First Amendment permits assembly even for unlawful purposes so long as it is limited to a peaceable discussion of such purpose." *Hunter* was affirmed by the Fifth Circuit at 422 F.2d 1158 and then reversed by the Supreme Court, 401 U.S. 989, 91 S.Ct. 1237, 28 L.Ed.2d 528 (1971) in light of the *Younger* cases. *See also,* Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931); Thornhill v. Alabama, 310 U.S. 86, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); Terminiello v. Chicago, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131 (1948); Garner v. Louisiana, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207 (1961) (Harlan, J., concurring); Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 12 L.Ed.2d 471 (1965); Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed. 697 (1963).

26. United States v. Robel, 389 U.S. 258, 365-66, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967): "That statute casts its net across a broad range of associational activities, indiscriminately trapping membership which can be constitutionally punished and membership which cannot be so proscribed. It is made irrelevant to the statute's operation that an individual may be a passive or inactive member of a designated organization, that he may be unaware of the organization's unlawful aims, or that he may disagree with those unlawful aims." *See,* Rollins v. Shannon, 292 F.Supp. 580, 592 (E.D. Mo. 1968) (Three-Judge Court) *vacated* 401 U.S. 988, 91 S.Ct. 1235, 28 L.Ed.2d 527 (1971).

27. United States v. Robel, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967); In Rollins v. Shannon, 292 F.Supp. 580, footnote 26 supra, the court stated in upholding a Missouri unlawful assembly provision that the statute was valid because it could only be employed "when the intent to commit criminal acts with force and violence is *manifested.*" (Emphasis added). *Id.,* at 590. The case of Devine v. Wood, 286 F.Supp. 102 (M.D. Ala.

1968) (Three-Judge Court) would appear to support this position since the court upheld a statute which required that the assembly be conducted in such a manner as to cause persons to reasonably believe the peace would be disturbed. *Cf.*, Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940): "When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious." Herndon v. Lowry, 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066 (1937); Feiner v. New York, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 295 (1951).

28. The Supreme Court has found the Ohio Criminal Syndicalism statute unconstitutional. In a per curiam opinion the Court held:

> "Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments."

Brandenberg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed. 430 (1969). The Brandenberg case proceeded through the Ohio judicial system and was appealed to the U. S. Supreme Court. On the other hand, Younger began in the federal system.

29. Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); Feiner v. New York, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 295 (1951); Devine v. Wood, 286 F.Supp. 102, 106 (M.D. Ala. 1968) (Three-Judge Court); Rollins v. Shannon, 292 F.Supp. 580, 591 (E.D. Mo. 1968) (Three-Judge Court) vacated 401 U.S. 988, 91 S.Ct. 1235, 28 L.Ed.2d 527 (1971).

30. Cox v. Louisiana, 379 U.S. 536, 558, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965). *See*, Note, Regulation of Demonstrations, 80 Harv. L.Rev. 1773, 1773-74 (1967).

31. Zwickler v. Koota, 389 U.S. 241, 250, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967). *See also*, NAACP v. Alabama, 377 U.S. 288, 307, 84 S.Ct. 1302, 12 L.Ed.2d 325 (1964).

32. *See*, Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); Ashton v. Kentucky, 384 U.S. 195, 86 S.Ct. 407, 16 L.Ed.2d 469 (1966); Shuttlesworth v. Birmingham, 382 U.S. 87, 86 S.Ct. 211, 15 L.Ed.2d 176 (1965); Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 3 L.Ed.2d 471 (1965); Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963).

33. Defendants have urged that our decision regarding Article 439 should be controlled by the case of Litchen v. State, 434 S.W.2d 128 (Tex.Crim.App. 1968). The appeal in Litchen was dismissed "for want of a substantial federal question" by the Supreme Court of the United States. Litchen v. Texas, 393 U.S. 86 (1968). This court considers this dismissal an affirmance of the lower court's result only, and since neither the Supreme Court nor the Texas Court of Criminal Appeals discussed the applicable constitutional principles we are persuaded to move on to our own consideration of the merits of plaintiff's challenge to this statute.

STATE SHOULD ELIMINATE WELFARE OFFICES AND LET UNIONS COLLECT MONEY AND CLOTHES!!

Entre el Gobierno que hace el mal y el Pueblo que lo consiente, hay cierta Solidaridad vergonzosa

Periódico Independiente
Al Servicio del Público

La Verdad

No hay mas que un poder;
la conciencia, al servicio de la justicia;
no hay mas que una gloria;
el genio, al servicio de la verdad.
Victor Hugo.

THE ONLY SPANISH-ENGLISH WEEKLY NEWSPAPER PUBLISHED IN NUECES COUNTY

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VOL. XXVII SANTOS DE LA PAZ, Editor and Owner — Corpus Christi, Texas, Nueces County — LA VERDAD NO PECA, PERO INCOMODA — Viernes, Enero 6, 1967 — Numero [illegible]

Permit To Cross Border Doubtful

Only Mexican Subversive Group Could Sympathize with Valley Farm Workers

FILLINGS

Union Leaders in Valley Are Vagrants!

[illegible]

EDITORIAL

Gov. Connally Should Do Something About Valley Strike

This weekly's editor Santos de la Paz last week wired United States Attorney General Ramsey Clark, to inform him of the Rio Grande Valley farm workers' situation. In a week or two, de la Paz plans to see Governor John B. Connally in Austin, in an effort to get the state chief executive to do something about the union abuses in Rio Grande City.

Getting help from government officials is always a slow process because the responsible public ervants are the last to handle the letters. Some of the missives pass through several hands before reaching the "right" fellow and a lot of time is wasted. Then, when the proper official does get it, he will take his sweet time studying it and will more than likely confer with other collegues before making a committment. The replies from these guys are usually brief and about all they will tell you in the first letter is that they will look into the matter and will inform you later as to the specific action that their particular office can assume.

The office of our state governor John B. Connally, which of course, is closer to home than Washington, D.C. is somewhat less difficult to penetrate and one of several reasons is the fact that we know the whole contingent of our representatives and our senator from this area. And they, in turn, know of our efforts and are usually well-versed in the newsworthy developments in South Texas.

We sincerely believe that ALL our representatives and our senator know exactly what goes on down in the Rio Grande Valley. These have been keeping tab with all the lawlessness of the union men in Rio Grande City, where three men have been arrested and charged with impersonating an officer, wearing two-bit "special police" badges, like those found in Cracker-Jack boxes. These state officials know that most of the men that the union has camped in the Valley are criminals and the records of these men are in our offices. These responsible men whose principal obligation is to the citizenry that elected them, know how important it is to placate the uproar and suspense that generates with each union scandal pulled off. More important still, these men know that something BIG is liable to blow up and really hurt somebody.

Governor Connally is a sensible man, perhaps one of the most [illegible] we have had at the head of our state government. He saw that

(Continued on Page 4)

From Texas Highway Department

[illegible]

Texas Department Of Public Welfare

[illegible]

El Juez Gonzalez De Beeville, Tex.

[illegible]

(Continued on page 4)

LA VERDAD

SANTOS DE LA PAZ, PUBLISHER

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EDITORIAL

EL GOBERNADOR DEBERIA HACER ALGO EN LA HUELGA!!

El editor de este semanario, Sr. Santos de la Paz, le informó por telegrama al Procurador General de los Estados Unidos, Ramsey Clark, de la situación que prevalece en el valle del Rio Grande. Y, en una semana o dos, el Sr. de la Paz propone visitar personalmente al Gobernador John B. Connally en Austin, con el propósito de interesar al jefe executivo del estado que intervengá en el asunto de los abusos de la unión en Rio Grande City.

Tratar de obtener asistencia de los oficiales de gobierno siempre es un proceso despacioso porque los responsables sirvientes públicos son los últimos que manejan las cartas. Muchas de estas misivas pasan primero por muchas otras manos antes de llegar a la propia persona y mucho tiempo se consume inutilmente. Después de que llege la carta al oficial indicado, éste toma todo su tiempo para estudiar el caso presentado y muy probable tenga que consultar a otros colegas antes de hacer algún comentario sobre ello.

Las contestaciones de estos oficiales casi siempre son breves y lo que estos le dicen a uno, es que ellos investigarán el problema y mas después nos informarán de los especificados pasos que la dicha oficina pueda tomar.

La oficina del gobernador del estado, John B. Connally, que naturalmente, está mas cerca a casa, que la que está en Washington, D.C., es menos difícil de penetrar y una de varias razones es el hecho de que nosotros conocemos todo el pelotón de los representantes y el senador estatal de esta región. Y ellos, en turno, conocen de nuestros esfuerzos y siempre están bien versados en lo que se desarrolla periódicamente, en el Sur de Texas.

Nosotros creemos sinceramente de que TODOS nuestros representantes y nuestro senador, están bien enterados de lo que pasa en el valle del Rio Grande. Estos señores se han dado cuenta de todos los alborotos de la unión en Rio Grande City, donde tres hombres han sido arrestados con cargos de personificar a un oficial de ley, de perturbar el tráfico, y otros cargos más. Estos andaban usando "badges" (escudo) de policia especial, como esas que se hayan en las cajillas de dulces.

Estos oficiales del estado saben que la mayoria de los hombres que la unión tiene en su campamento en el valle, son criminales registrados y que los records de estos están en las oficinas de nuestro periódico. Estos señores también saben que la obligación principal de ellos es para los ciudadanos que los eligieron a ellos al puesto, y lo importante ahorita es aplacar el furor y la supremacía que brota con cada escándalo que la unión provoca. Y más sobresaliente, todavia, es que estos señores saben de que algo más grande y peligroso puede resultar de todo esto, y poner en peligro a mucha gente.

El Gobernador Connally es un hombre sensible, quizá uno de los mas astutos que hemos tenido en Austin. El vió que la marcha de los trabajadores agricolas era una MENTIRA, y firmemente rehusó verlos en Austin el dia del Trabajo (Labor Day). Encabezando dicha marcha estaban dos hombres del cloro, uno de ellos un ministro Bautista, y el otro un Cura Católico, y ambos trataron enérgicamente de convencer al gobernador de que él debería de oir sus problemas.

El se hizo sordo. El tenia mucha razón de hacerlo!

Qué fué lo que pasó con estos dos tan importantes hombres de la Iglesia, que tan sinceramente le prometieron a los trabajadores que los llevarian hasta los escalones de la Casa Blanca en Washington, D.C.? Estos dos chavos eran tan chuecos tal y como la misma marcha de los trabajadores, y el gobernador lo sabía bien, y si les hubiese hecho caso a las peticiones de ellos, él hubiese insultado a todo Texano. Tanto el ministro como el cura han sido corridos de dondequiera que ellos han estado. Les ha gustado meterse en asuntos donde suena el dinero y escándalos. Nosotros tenemos aclaraciones de personas que han conocido a los dos y estas indican de que los dos son una deshonra para su respectiva religión.

El editor Sr. de la Paz habló con el cura y pronto se dió cuenta de que este no era cura ni nada, solo era un sinverguenza de marca. Hablaba como un trampa y accionaba todavía peor. Su vocabulario era apachucado, y en fin, para nuestro editor, este no era más cura que Fidel Castro. Y cuando el editor se lo dijo en su cara, este se puso su sombrero y se largó.

El gobernador debe de mandar a los rinches al Valle.

Y nosotros creemos que lo hará.

The Political Corner

By JUAN TORTILLA

I have been asked why I went into politics.

First of all I want to take time now to thank the many people who voted for me and even if I didn't win we set a wheel in motion which can not be stopped unless you as the voter's let it.

I don't know that I will be speaking for the losers, their feelings and disappointments but you as the public should know what goes into a political campaign and the candidates. First of all, nobody puts his fortune and his ego more publicly on the line, than the politician running for office.

An election defeat is not a private anguish. The newspaper story [illegible] the [illegible] and [illegible] that caused it, and [illegible] record the [illegible] fact for one's great grandchildren to read.

Moreover — the public idea to the contrary — most politicians are [illegible] of a [illegible], even if it is no greater than their belief that they are better public servants than their opponents. Then, when a politician loses, it hurts him and perhaps all the more because his defeat has to be faced publicly and in the smiling eyes of the [illegible] that can [illegible] the [illegible].

Adlai Stevenson, after his first defeat by Dwight Eisenhower, told a "Lincoln story" about a little boy who stubbed his toe and said, "It hurts too much to laugh and I'm too old to cry". Then Stevenson had to go through it all a second time. So if your candidate didn't win, you alone know why, and perhaps, [illegible]

[illegible]

JUAN TORTILLA

Las gentes dichosas no memoran [illegible]

La [illegible] de la [illegible] —FRANCE

CAMP PENDLETON, CALIF. (FHTNC) — Marine Private [illegible] de N. [illegible], son of Mr. and Mrs. Severiano [illegible] of 2[illegible] Margarita St., Corpus Christi, Tex. has completed four weeks of individual combat training here.

During the training period, he received more than 200 hours of instruction in guerrilla warfare, the use of infantry weapons, combat patrols, and squad tactics.

His next assignment is four weeks of basic specialist training to prepare him for a specific job in the Marine Corps. Marines to be assigned to infantry units will be taught sub-specialties such as the technical operation of the machine gun, grenade launcher, or mortar. Those entering highly skilled occupational fields will receive advanced training at various technical schools.

There are an estimated [illegible] million farmers [illegible] in the U.S.

El hombre busca la felicidad, la mujer la espera.—CATALINA.

Boys and girls between 9 and 19 years of age can become 4-H Club members. Contact the County Extension office.

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"PROBLEMAS DE LOS HIJOS"

Diecisiete millones de lectores siguen en todo el mundo los consejos del doctor Spock, sus lecciones directas, practicas, amenas son sumamente instructivas. En este tratado de PROBLEMAS DE LOS HIJOS se han recogido las más importantes, referentes a los problemas más difíciles que actualmente se plantean a los padres: los relativos a las crisis de la adolescencia. De la rebeldía a la delincuencia, del aislamiento huraño a las bandas de muchachos, de la sistemática oposición a los padres hasta las más peligrosas aventuras, todos los peligros aparecen en este libro analizados con infinidad de ejemplos, desde su primera gastación cuando el adolescente de hoy no era mas que un niño.

El doctor Spock ayuda a los padres a descubrir a tiempo esos problemas y a remediarlos. Todo padre o madre interesados en sus hijos hallarán en esta obra el caso que les interesa y las normas concretas para afrontar la dificil etapa en que el desarrollo físico, mental y sexual forja la personalidad definitiva de sus hijos a través de las tormentas de la adolescencia.

Hoy mismo recorte y envié este cupón y acompáñelo de U. S. Cy $3.50 en giro postal internacional a la orden de:

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y en la Cámara Nacional de Comercio

(Favor de enviar toda correspondencia a nuestro Apartado)

FILLINGS

(Continued from Page 3)

[illegible] in the valley [illegible] ... [illegible] a home in Rio Grande City.

Rio Grande City is a peaceful [illegible] where residents know and respect each other and where law and order is taken as a requirement for decent living and a guarantee for human safety. [illegible] ... suffer the consequences of an adventurer.

Thanks to men like Ray [illegible], jefe of La Casita Farms, who have done their utmost for the betterment of Rio Grande City and the valley in general. [illegible] ... and that is the best insurance these guys have!

Recent reports show that the Rio Grande Valley did exceptionally good last year despite of the drought. [illegible] ... Cotton, too, is a BIG item in the valley. [illegible] ... such progressive region as is the Rio Grande Valley.

And, perhaps, that is the big reason why La Verdad will continue to back the farm owners in Rio Grande City and the valley in their opposition to the union's demands [illegible] ...

[illegible]

It hasn't sunk yet.

Subversive Group ....

(Continued from Page 3)

[illegible]

CONNALLY – Cont'd....

(Continued from Page 1)

the farm workers march was a big fake and flatly refused to meet them in Austin on Labor Day. At the head of the march were two CLERGYMEN one a Baptist preacher, the other a Catholic priest, and both of these men tried at length to convince Gov. Connally that he should listen to them.

He turned a deaf ear. He had every right to do so ! !

Just what happened to these two very important church men who promised to lead the farm workers to the steps of the national capitol in Washington, D. C.? These two were as phoney as the march itself and Governor Connally knew it all along — that's why it would have been an insult to the average Texan (taxpayer and resident) and a waste of time to confer with these castoffs. These two church men have been ousted from every place they have been and we have statements from people that know both of them. It seems that both have always liked to be in the middle of money collections and scandals and both are a DISGRACE to their respective religions.

Editor de la Paz talked at length to the Catholic priest and from the things he said and the way he said them, this guy was no more a priest than Fidel Castro. When de la Paz called him a fake to his face, he said nothing. He just put on his hat and walked away.

Yes, Governor Connally knew that the antics of the union organizers and their paid personnel were of the circus variety and he wanted no part of it.

So now, we want to get his attention to the potential danger that exists in Rio Grande City and the valley, where union organizers capriciously want the people in the union. These guys are intimidating decent folks. They are impersonating police officers and blocking traffic. What will be next?

Gov. Connally could easily send the Rangers there. These fellows wouldn't mess around, besides the local police in Rio Grande City need the help and support of state officers.

We could be called anything but fakers.

And Gov. Connally knows that. That is why he will hear our plea ! !

Información Para El Público

Los ciudadanos de Rio Grande City se han organizado bajo el nombre de "Citizens Committee" para informar al público de Corpus Christi y los alrededores, que hay dos [illegible] ... [illegible]

[illegible]

CITIZENS COMMITTEE OF RIO GRANDE CITY

U. S. AIR FORCES [illegible] ... Gonzales Jr. [illegible] Corpus Christi, Texas [illegible] U. S. Air Force [illegible] Asia.

Airman Gonzales [illegible] Mrs. Crispin Gonzales [illegible] St., Corpus Christi [illegible]

The airman attended Roy Miller High School.

[illegible] Airman First Class Crispin Gonzales Jr. of Corpus Christi, Texas [illegible] U. S. Air Force [illegible] in Southeast Asia.

(U. S. Air Force Photo)

FT. RUCKER, [illegible] — Army Staff Sergeant [illegible] son of Mr. and Mrs. [illegible] was assigned to the [illegible] Battalion, Ft. Rucker, [illegible]

Sgt. [illegible] is among the first [illegible] of the battalion [illegible] recently organized.

[illegible] entered the Army [illegible]

The sergeant attended [illegible] High School.

His wife, [illegible], lives at [illegible]

WITH U.S. COMBAT AIR FORCES, Vietnam — Airman Third Class Larry E. Owen, son of Mr. and Mrs. J. R. Owen of [illegible] Lane, Corpus Christi, Tex., is [illegible] in Vietnam in the fight against Communist aggression.

Airman Owen, an aircraft [illegible] repairman, attended W. B. Ray High School.

VIETNAM [illegible] — Marine Corporal [illegible], son of Mr. and Mrs. [illegible] of [illegible] St., Corpus Christi, Texas, was awarded the Purple Heart Medal by his commanding officer, Lieutenant Colonel [illegible] while serving with the Third Battalion, First Marine Regiment, First Marine Division, Vietnam.

He received the medal "for wounds received in action with an opposing armed force of a foreign country in which armed forces of the United States are engaged. . ."

San Diego, Calif. [illegible] ... [illegible]

700 Persons Are Hungry in Rio Grande City the UNION Leaders Say..... Can They Prove It's True?

SENS. EDWARD KENNEDY, HARRISON WILLIAMS AND YARBOROUGH EXAMPLES OF MEDIOCRITY OF U.S. SENATE

Entre el Gobierno que hace el mal y el Pueblo que lo consiente, hay cierta Solidaridad vergonzosa

Periódico Independiente
Al Servicio del Público

La Verdad

No hay mas que un poder; la conciencia, al servicio de la justicia; no hay mas que una gloria; el genio, al servicio de la verdad.
Víctor Hugo.

THE ONLY SPANISH-ENGLISH WEEKLY NEWSPAPER PUBLISHED IN NUECES COUNTY

[illegible]

Telegram Sent To Members of U.S. Senate Subcommittee on Migratory Labor

EDITORIAL

THREE OF A KIND

We know that none of you will believe what we are about to say but as sure as taxes and death, we were positive that the United States Senate subcommittee on migratory labor, composed of Sens. Harrison Williams, D—N.J., chairman, Edward Kennedy, D—Mass., and Ralph Yarborough, D—Texas would come to the Rio Grande Valley and blast Capt. Allee and the Texas Rangers and belittle Gov. John B. Connally.

The whole thing was a political show for the benefit of Sen. Ralph Yarborough and sponsored by the union and paid by all of us the taxpayers. The work that all three of these senators did during the hearings plus the undignified manner in which they handled the proceedings and the degree of responsibility they demonstrated in the delicate matter at hand, dealing with man's livelihood, domestic tranquility and life itself, we'd say they are NOT worth even the $1.25 an hour the union is fighting for.

If ever any group of men representing the government of the United States disgraced the emblem, integrity, solemnity and the high standards of nobility which have characterized the strongest advocates of our democratic system, the aforementioned Senate subcomittee is it.

The committee, THREE OF A KIND, gave no time to the study of the problems in Rio Grande City. It cares little, if at all, what happens to those now working, for whatever wages, if the growers will decide to mechanize. Or, if the growers, forced by the union, will have to let go several people in order to afford the minimum wages for a few. There are people now living on the patron's land and occupying a shack belonging to the patron. The patron pays the utilities, insurance and lends them money in emergencies and so forth. What will become of these poor folks? There a multitude of situations that could suddenly hamper these unfortunate residents, who, because of their lack of education, must face these humiliating and tormenting abuses.

No one in Rio Grande City has indicated that he wishes to become a union member. This was proven last week when a union official wanted the union members in the courtroom to raise their hands. There was none.

There and then, the subcomittee from Washington should have put a halt to their sideshow and for once taken the time to get things in order. It knew at the beginning that union leaders were lying; that there was never a strike there; that allegations against the conduct of the Rangers was grossly exaggerated. The senators knew these things and plenty more... yet, all three democrats, threw their influence in favor of the union and opposite the growers and the Texas Rangers and Gov. Connally.

Only one senator, a Republican at that, Sen. Paul Fannin, R—Arizona, who attended the hearings in its last day, showed any prudence. He definitely said that things as they are now prove that there is no strike and that there is no union in Rio Grande City.

(Continued on last page)

Honorables Visitantes de Celaya en Casa del Sr. Manuel Ponce y Fam.

[illegible]

Rusia y Francia Quieren Retirar a los E. U. A. de Viet Nam

[illegible]

FILLINGS

[illegible]

El Vaticano Suspende a un Obispo

[illegible]

Ingresaron 22 a la Marina

[illegible]

Ganaron los Bandidos en el Poker

[illegible]

Johnson en San Antonio

[illegible]

FALLECIO

[illegible]

Friday, June 30, 1967

Below is a copy of the telegram of 182 words Santos de la Paz, editor and publisher of LA VERDAD sent to the members of U. S. Senate subcommittee, holding hearings at Edinburg, Texas last week:

To the Honorable Senators: Harrison Williams, Edward Kennedy and Ralph Yarborough: members of the Senate Subcommittee on Migratory Labor, Hidalgo County Courthouse, Edinburg, Texas:

Will you please answer the following questions:

1.—Do you wish for "La Casita" to close down and throw its employees on relief?
2.—Do you know if La Casita wages are in conformity with the requirements of the Labor Board?
3.—Do you know that most all of the Union representatives, from outside the state, have communistic affiliations?
4.—Do you know that some of them have lengthy criminal records?
5.—Do you wish to encourage the infiltration of communism in our country?
6.—Who called you to the Rio Grande Valley to investigate this matter?
7.—Do you know of any of the valley farmers who belong to the Union?
8.—Do you know that Union men in the valley have broken all Civil Rights?
9.—Have the present La Casita employees ever complained of bad treatment and low wages?
10.—Do you know that most all who have taken part in the strike are on the welfare rolls and NEVER work?

(signed)
SANTOS DE LA PAZ
Editor and Publisher,
LA VERDAD.

Editor's note: This wire was received in ample time, but the subcommittee ignored it. The truth is that none of the three is capable of answering these questions because they are not qualified to do so. The situation in Rio Grande City is as plain as one's nose, yet these three senators act entirely opposite that trend. They jumped on the oppressors' bandwagon and left the oppressed still oppressed.

Please pass these questions to your audience and then on to the press.

Dinero Para más Trabajos

[illegible]

[illegible] de Alabama en Houston

[illegible]

Vandalismo en Dallas

[illegible]

En Donde Está el Dinero, Ropa y Comida Colectados para los Huelguistas?

Worse Than Judge Roy Bean of Pecos

Democratic Sens. Williams, Edwards, Kennedy and Yarborough Polluted Air In Valley

By SANTOS DE LA PAZ
LA VERDAD Editor

According to its chairman, Sen. Williams Harrison, D—N.J., the U. S. Senate subcommittee on migratory labor, which a week ago held a two-day hearing in Edinburg, in the union versus growers labor strife, is NOT a prosecuting agency, yet, he and the committee acted much worse.

He accepted complaints against Capt. A. Y. Allee of the Texas Rangers, condemned the man and his rangers and found them "guilty" of trespassing upon private property, of making numerous arrests without legal cause, of using physical force far beyond that required to take a subject into custody, of participating in acts of strikebreaking and of committing other infringements of personal and property rights. He and the committee did ALL of this without having the accused before the tribunal to defend himself.

He and his other two cohorts, Sens. Edward Kennedy and Ralph Yarborough have the gumption to call themselves Senators of the United States Senate. If this trio is highly regarded in the Senate as to its capabilities, integrity and sense of responsibility, then, God, don't let me know the rest of them. I know NOW why our country is in the shape it is!

The three senators mentioned above are definitely UNION men. These were elected by union power and are obligated to those that put them in office. These three guys came to the Rio Grande Valley with their decision in their hip pocket, and while there, they decided to put on a show for the unlettered and highly emotional natives.

Yarborough, the Lone-Star State's Blunder in Washington, who feverishly hates Governor John B. Connally, thought he would give Sen. Edward Kennedy the spotlight so that Kennedy, through the magnetic magic of his dead brother, could draw the attention of the crowds. This he did. The Starr and Hidalgo Country courthouses were not the only crowded areas last week. Large numbers of Kennedy (the late pesident) fans showed up at McAllen's Miller International Airport to watch the arrival of Sen. Kennedy. And, of course, he was mobbed as he walked out of the hearings rooms.

Now, here is a fellow that knows NOTHING about NOTHING. He does not know what work is, for he hasn't worked a day in his life. How could he have feelings or compassion, if he hasn't experienced any hardships or been in contact with the working class? Why is a man so inept and useless put on a committee having to do with labor, the livelihood of man, the maintenance of a family... a highly responsible item... is beyond comprehension. He asked a few questions but these were ridiculous and immaterial. And being the irresponsible person that he is, he left the hearing before it ended. He said his wife was sick and he had to catch a plane. If such were the circumstances, he should have permitted some other senator to take his place.

I sent a telegram to the committee while it was in session and they "swallowed" it. Its contents can be found in a block in the front page.

Imagine the expense the government incurred in sending these senators plus Republican Senator Paul Fannin, R—Arizona to the Rio Grande Valley. Fannin was the ONLY senator showing dignity and proper conduct. He handily saw that there is no strike and no dispute in Rio Grande City.

One of the witnesses in the hearing, Franklin Garcia, an AFL-CIO organizer in the Valley, declared that since 1963 the Meatcutters Union has won 17 representation elections and has gained 11 contracts in the Valley while engaging in only two strikes.

He said that one strike was in Elsa where there was only one policeman in town and the people did not get anymore. He said there was peace and quite and the Texas Rangers were not needed then. Garcia, is the fellow I ran out of my office. He thinks and talks like a Communist; so I told him to get the heck out of my place, a couple of years back. He tried twice to unionize the butchers at Biels Grocery and failed both times!

He tries to compare skilled workers (butchers and meat cutters) with melon pickers, which are two entirely different classes of workers. Then, he mentions Elsa... a one-street town were there is hardly any people. Besides, he should know that it is not the town's citizens that raise the stink but the union's paid caravan and clowns!

About all Sen. Yarborough did was, as usual, make political speechs. He is the worse orator this side of the Mississippi, yet, he just loves to make with the words. There was hardly any reaction from the crowds, and remember that he was the only Texas on the committee.

It is indeed a disgrace to see anything like this take place. Ray Rochester, general manager of "La Casita Farms" had to leave for Houston on business, but before he departed he told newsmen that the hearing was a "three-ring circus" and that it was unfair. He also stated that if another such hearing were conducted, he would like to have the concession for peanuts and popcorn. Bet he could sell a lot of melons, too.

Morris Atlas, attorney for "La Casita" related the history of the fim which has been the chief target of the USWOC organizing drive. He pointed out the aggresive attitude of the farm and of Rochester and stressed the contention that the farm pays the highest wages in Starr County. Atlas clashed with Kennedy on several questions concerning elections by workers with the posibility of become union members.

In the early days (1825-1904) on the West Texas frontier, where the Pecos and the Rio Grande rivers join, there was a saloon-keeper and justice of the peace named Roy Bean. He was, like the Senate subcommittee just recently in the valley, prosecutor, jury and judge. Everybody wilted before him. One had two chances with him: slim and none. He became known for his colorful decisions and for his boast that he was the only "Law West of the Pecos". Once he fined a corpse $40 for carrying concealed weapons. That tells how big a crook he was!

What the growers in the valley should do is to ignore this Senate subcomittee completely and write the president to intervene on the grounds that said subcomittee is partial to the union, coducts hearings in dictatorial style: "I am RIGHT and you are WRONG."

Yes, sir, the whole thing was rigged up, and because three senators promptly decided to show their scorn for valley growers, the WHOLE United States Senate will have to share the shame and humiliation of not being that important cog in our government's machinery that has always stood for the highest principles our forefathers have fought and perished for.

OPORTUNIDADES DE EMPLEOS

Raul [illegible] (I.), Presidente del PASO en el Estado de Texas [illegible] en una junta reciente de líderes Americanos de Descendencia Mexicana con administradores de Humble Oil and Refining Co., en sus oficinas generales. Junto con [illegible] y dos otros líderes Americanos de Descendencia Mexicana buscando medios para engrandecer oportunidades de empleo para Americanos de Descendencia Mexicana [illegible] (de izquierda a derecha) El Lic. Albert J. Hernández, Presidente Nacional de LULAC, Sr. Harry O. [illegible], encabezado del Departamento de Trabajo, [illegible] y de Relaciones de Empleados, Rep. Lauro Cruz, y Sr. George B. McCullough, Administrador de Relaciones de Empleados.

Unión, Mientras Toma Forma el Comunismo

[illegible]

... no quiere pagar buenos sueldos y hay que hacerle huelgas y más huelgas y ahí es donde se le pierde el respeto a la Democracia, porque ya no es la voluntad del pueblo la que rige, es el sindicato, el grupo de los que están vendiendo la democracia para substituirla con la funesta doctrina comunista que tiene a Cuba bajo su [illegible] y que la cumplirá con el mismo Evangelio [illegible] que usan con el obrero y las masas trabajadoras.

En los campos de batalla mueren nuestros héroes defendiéndonos del Comunismo, los comunistas están tentando en America su [illegible] mientras allá se muere.

Grassroots Opinion

MADISON, WIS., REPORTER: "An area which continues to prove increasingly confusing is that of prices. It has been [illegible] [illegible]"

[illegible]

PAINTSVILLE, KY., HERALD: "We have finally determined just what the Postal Service had in mind when it introduced the much heralded Zip Code procedure. By providing all of us with numbers, our mail delivery is to be speeded. All the various post offices have to do is look at the number and zip... [illegible]"

[illegible]

FAULKTON, S. D., RECORD: "There is a [illegible] [illegible]"

EL DORADO, KANS., TIMES: "United States refineries will spend over [illegible] million for pollution control in 1967, according to a survey made by the Petro Chem Engineer, of Dallas. When refiners are willing to spend the large sum of [illegible] million in 1967 to guard off all possibility of pollution by their plant, it is evident they are sincere in their purpose."

There are an estimated [illegible] million farmer [illegible] in the U.S.

If Eugene Nelson is not a Union Member he Must be a Communist
For he has Led Violence in Rio Grande Valley

SHORT NOTES ON THE STRIKERS

EUGENE NELSON DENIES HE IS A UNION MAN; MAGDALENO DIMAS SAYS HE IS A U.S. CITIZEN BUT BORN IN C. MEXICO

During the court hearings on the restraining order, June 27, Arnulfo Guerra, attorney for the Old Guerra Party testified in favor of the union. While being cross-examined by attorney Morris Atlas, Guerra did say that he was the one that fixes the green cards for the Mexican nationals who cross the border daily to work in the fields here; that he also profits by helping these Mexican natives get their passports in order and other documents necessary to legally work in the nothern states; that he also fill out unemployment cards for these men with Starr County addresses while these all live in Mexico.

Eugene Nelson, a Union bully, who not too long ago was full of hot air, is nothing but a deflated baloon now. He flatly denied being a union man, yet everyone knows he is a union organizer. He is the same person arrested not too long ago for making threats to the Texas Rangers, saying that some of them would be killed. He is the same person that was released on bond for that offense. He is now making out like a deaf-mute.

Magdaleno Dimas, the highly-explosive former convict, who has accused the Texas Rangers with brutality, was cross-examined by attorney Atlas as to Dimas' citizenship, and the tough guy said 'yes' when asked if he were an American citizen. He answered 'yes' when asked if he were born in the United States, and when asked where, he said, "I was born in Camargo, Mexico". Dimas answered 'yes' these three questions: It is a fact that you were arrested by federal agents for transporting wetbacks? Yes. It is a fact that you are now on probation? Yes. And is it a fact that you were once deported to Mexico as a wetback? Yes. All answers said yes.

There still is much argument over the way the U.S. Senate subcomittee on Migratory Labor handle the hearings. Our correspondent in Edinburg says that Sen. Edward Kennedy upon leaving the site said that he hoped the union would win its fight there. That clearly staples Mr. Kennedy as a union sympathizer.

Mr. Martin Shwartz, a grower here told Kennedy that instead of preoccupying himself with the false strike he should be doing something about the still progressing investigation of the assassination of his brother.

Mrs. Shwartz told Kennedy that her children had to work in the fields because there was a labor shortage and Sen. Kennedy said that she could hire the Little League (small kids) and make money. She also told him that the necessity of having the Texas Rangers there was a 'real' one. That if it were not for the Rangers, there might have been some incidents of violence and probably killings.

After a huddle with Gilbert Padilla, union bigshot, Sen. Kennedy asked the crowd in the hearing room to raise its hands if they belong to the union... and nobody did that, although Padilla was making gestures to some to put their hands up. But no body did.

Mrs. Shwartz told Sen. Kennedy that other countries, like Mexico, pay $1.25 a day to their fruit pickers, while here they get at least $1.25 an hour from them and other growers. The worse, she said, is that our country permits the importation of tons and tons of fruit from these countries and by the time ours gets to market it is worth very little.

Domingo Arredondo, president of the strikers has been going around saying that the union has 3,000 members in Rio Grande City, yet he is unable to produce a single name.

Mr. Shwartz asked Kennedy if he had ever visited this area of Texas and the senator said he had not. He then reminded the senator that his brother Robert, while Attorney General of the United States had launched a firm investigation of James Hoffa of the union and that the antics of the unions were clearly brought to light. Asked what he thought about these tactics and so forth, and he decline to answer.

FILLINGS

(Continued from Page 1)

[illegible]

Sigue Reinando en México el P.R.I.

[illegible]

por Taxes Demandado

[illegible]

EDITORIAL

(Continued from Page 1)

In brief, if there is violence in that little village now it is because the union brought it there. If civil rights are being violated there... it is the union that's doing it. If people are demonstrating out in the streets... it is not the people working in the melon patches and fields, but paid union agitators from California, students of communism, who are actually vagrants and hardly do any work.

Oh yes, and if there is any confusion now it is on account of a United States Senate subcommittee, unqualified and partial to the union, that came to Texas to [illegible] the Texas Rangers [illegible] name but without knowing it, blemish the exemplification of that great agency which is the Senate in our national capitol.

Appendix I

APPENDIX "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO,
KATHY BAKER, DAVID LOPEZ,
GILBERT PADILLA, MAGDALENO
DIMAS, BENJAMIN RODRIGUEZ,
and UNITED FARM WORKERS
ORGANIZING COMMITTEE,
AFL-CIO,

Plaintiffs

CIVIL ACTION
No. 67-B-36

vs.

A. Y. ALLEE, JACK VAN CLEVE,
JEROME PREISS, T. H. DAWSON,
DR. RENE SOLIS, RAUL PENA,
ROBERTO PENA, JIM ROCHESTER,
B. S. LOPEZ, and S. H. DENSON,
Defendants

DIXIE, WOLF & HALL, CHRIS DIXIE, ROBERT E. HALL,
and GEORGE C. DIXIE of Houston, Texas
Attorneys for the Plaintiffs

CRAWFORD MARTIN, Attorney General of Texas,
HAWTHORNE PHILLIPS, ALLO B. CROW and
GILBERT PENA, Assistant Attorneys General of Texas,
and ATLAS, SCHWARZ, GURWITZ & BLAND,
GARY GURWITZ of McAllen, Texas,
LUTHER E. JONES, Corpus Christi, Texas
FRANK R. NYE, JR., Rio Grande City, Texas
Attorneys for the Defendants

Before BROWN, Chief Judge
United States Court of Appeals
GARZA, District Judge, and
SEALS, District Judge

MEMORANDUM AND ORDER

MEMORANDUM AND ORDER:

On June 26, 1972, this Court entered its opinion in this case holding that the Plaintiffs were entitled to certain declaratory and injunctive relief. 347 F.Supp. 605. In accordance with that opinion the Plaintiffs have submitted a proposed final decree. The Defendants through the Attorney General, have submitted their objections and an alternate decree. The Plaintiffs have responded with a memorandum and a revised proposed final decree. The Defendants' objections will be considered in their numerical order.

The Defendants have made no objections to paragraphs 1 through 7 of the proposed final decree.

Defendants' Objection No. 1. Defendants object to paragraph 8 as repetitious in that it goes into evidentiary matters which are inappropriate to a final decree. The Plaintiffs respond that the language to which the Defendants object is appropriate in that it shows that the statutes were used as part of the illegal conduct and that this fully satisfied the requirements of *Younger v. Harris*, 401 U.S. 37 (1971).

This objection will be overruled.

Defendants' Objection No. 2. The Defendants object to paragraph 9 of the proposed final decree in that as proposed the paragraph does not reflect the Court's opinion which held the entirety of section 1 of article 5154d unconstitutional. Plaintiffs respond that subdivision 2 of section 1 is not included because in Plaintiffs' opinion the record does not show any arrest under this specific subdivision.

The objection will be sustained and the paragraph expanded to include subdivision 2 of section 1. The record contained many instances of arrests for "mass

picketing." The arrest on May 31, 1967 (p. 13 of the opinion, 347 F.Supp. 616) is an example of such an arrest. It is clear from a reading of *Sabine Area B.T.C. v. Temple Associates, Inc.*, 468 S.W.2d 501 (Tex.Civ. App. - Beaumont, 1971, no writ), that a charge of "mass picketing" presents both subdivisions to the Texas trial court. Thus both subdivisions were properly before this Court. The Court notes that the constitutionality of the definitions of "picket" and "picketing" were not challenged in this suit, that no argument was presented on these points, and the Court does not pass on their validity.

Defendants' Objection No. 3. The Defendants object to paragraph 10 of the proposed final decree in that it is incomplete on the theory that the Court held unconstitutional the entirety of sections 1 and 2, article 5154f. The Plaintiffs respond that the Court dealt specifically only with those sections and subparagraphs set out in the Plaintiffs' proposed final decree. The Plaintiffs point out that the Defendants made no use of paragraph e(3) of section 2 of article 5154f, and that this is why that particular provision has not been included in the proposed final decree.

The Defendants' objection will be overruled. The Court's opinion did not deal with paragraphs a, c, f or g of section 2. These are definitions of the terms, "labor union," "picket," "employer," and "employee."

Paragraph h of section 2 should be added to the decree as being a part of the statute declared unconstitutional, since the Court did deal with the term "labor dispute" at 347 F.Supp. 627. There is no evidence in the record showing any use by the Defendants of paragraph e(3) of section 2 and there is no reason to include that provision within the decree.

Defendants' Objection No. 4. Defendants object that the language of paragraph 11 of Plaintiffs' proposed final decree is unclear. The Plaintiffs concede this point and would reword the decree to conform to the proposal of the Defendants.

The objection will be sustained.

Defendants' Objection No. 5. The Defendants object to paragraph 12 of the proposed final decree on the theory that it is incomplete in that the Court held unconstitutional the entirety of Article 474 of the Texas Penal Code.

The Plaintiffs respond that the proposed paragraph deals with the article only as it was used against the Plaintiffs and omits language concerning going "into" a private house and language concerning exposure of the person to someone under the age of sixteen or rudely displaying a pistol or deadly weapon, because no arrests were made concerning such conduct.

The Defendants' objection will be overruled since these issues were not in the case.

Defendants' Objection No. 6. In Objection No. 6 the Defendants would consolidate into one paragraph, paragraphs 9 through 14 of Plaintiffs' proposed final decree. The Plaintiffs disagree.

The objection will be overruled. Specificity is more important here than brevity.

Defendants' Objection No. 7. In Objection No. 7 the Defendants request an alteration of the Court's opinion before the entry of judgment in light of Defendants' objections 2, 3 and 5 to paragraphs 9, 10 and 12 of Plaintiffs' proposed decree.

The Court's ruling on objections 2, 3 and 5 dispose

of this objection and it will be overruled.

Defendants' Objection No. 8. This objection goes to language in paragraph 12 which the Defendants believe to be an unnecessary repetition of evidentiary facts. The Defendants object to the second sentence of paragraph 12 and the first half of the third sentence. The Plaintiffs respond that the language is appropriate and lends clarity to the decree.

Defendants' objection will be overruled.

Defendants' Objection No. 9. The Defendants object to the wording of paragraph 15 of the Plaintiffs' proposed final decree, based upon Defendants' objections 2, 3 and 5.

The Court's rulings on objections 2, 3 and 5 dispose of this objection and, this objection will be overruled.

Defendants' Objection No. 10. The Defendants are of the opinion that paragraph 16A unnecessarily restricts law enforcement officers in the performance of their duties. The Plaintiffs are willing to add the words "without adequate cause" at the end of paragraph 16A, but do not wish to add the words, "conducted in a peaceful, lawful, and proper manner," proposed by the Defendants because this would create a selective enforcement loophole.

The Plaintiffs' proposed addition will be accepted and the Defendants' objection overruled.

Defendants' Objection No. 11. The Defendants object to paragraph 16B in that it unreasonably restricts law enforcement officers and Defendants propose to add the words, "conducted in a peaceful, lawful, and proper manner," the Plaintiffs make the same response made to Objection No. 10.

Defendants' objection will be overruled.

Defendants' Objection No. 12. Defendants object to the use of the second "or" in paragraph 16C, as this creates an ambiguity. The Plaintiffs have submitted a molification which eliminates the ambiguity.

Plaintiffs' modification will be accepted and the objection overruled.

Defendants' Objection No. 13. Defendants object to paragraph 16D as repetitious of paragraph 15. The Plaintiffs believe that this is necessary because of the repeated arrests and dispersal of persons in creating actual obstructions.

Defendant's objection will be sustained.

Defendants' Objection No. 14. Defendants object to paragraph 16E as uncalled for since the activity which this paragraph would enjoin is already unlawful. The Plaintiffs believe that this is necessary since the record shows several beatings.

Defendants' objection will be sustained.

Defendants' Objection No. 15. Defendants object to paragraph 16F as repetitious of the injunctive language in paragraph 16B. The Plaintiffs believe that this language is necessary to prevent the practice of using the arrest of one person to justify the arrest of bystanders.

Defendants' objection will be overruled. Paragraph 16F will be renumbered 16D in the Final Judgment.

Therefore, it is ORDERED that Defendants' Objections 1, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 15 are OVERRULED; and that Defendants' Objections 2, 4, 13 and 14 are SUSTAINED.

The Defendant Rochester by a letter that was received by the Court on November 22, 1972, objects to that part of the Memorandum and Proposed Judgment that finds that Rochester acted in concert with the other defendants.

The objection is without merit and is overruled.

A Final Judgment will enter accordingly. Clerk will enter this Memorandum and Order and provide counsel with true copies.

Done at Brownsville, Texas, this 4th day of December, 1972.

JOHN R. BROWN
John R. Brown, Chief Judge
United States Court of Appeals

REYNALDO G. GARZA
United States District Judge

WOODROW SEALS
United States District Judge

TRUE COPY I CERTIFY
ATTEST:
V. BAILEY THOMAS, Clerk

By Sofia Anderson
Deputy Clerk

APPENDIX "C"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO MEDRANO, KATHY BAKER, DAVID LOPEZ, GILBERT PADILLA, MAGDALENO DIMAS, BENJAMIN RODRIGUEZ, and UNITED FARM WORKERS ORGANIZING COMMITTEE, AFL-CIO,

Plaintiffs

CIVIL ACTION
No. 67-B-36

vs.

A. Y. ALLEE, JACK VAN CLEVE, JEROME PREISS, T. H. DAWSON, DR. RENE SOLIS, RAUL PENA, ROBERTO PENA, JIM ROCHESTER, B. S. LOPEZ, and S. H. DENSON,

Defendants

DIXIE, WOLF & HALL, CHRIS DIXIE, ROBERT E. HALL, and GEORGE C. DIXIE of Houston, Texas
Attorneys for the Plaintiffs

CRAWFORD MARTIN, Attorney General of Texas, HAWTHORNE PHILLIPS, ALLO B. CROW and GILBERT PENA, Assistant Attorneys General of Texas, and ATLAS, SCHWARZ, GURWITZ & BLAND, GARY GURWITZ of McAllen, Texas, LUTHER E. JONES, Corpus Christi, Texas FRANK R. NYE, JR., Rio Grande City, Texas
Attorneys for the Defendants

Before BROWN, Chief Judge
United States Court of Appeals
GARZA, District Judge, and
SEALS, District Judge

FINAL JUDGMENT

FINAL JUDGMENT

1. This Final Judgment is rendered for and on behalf of Plaintiffs, United Farm Workers Organizing Committee, AFL-CIO, and also Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, and Benjamin Rodriguez, individually and as representatives of the class described in Paragraph 2 of this Final Judgment.

2. This Final Judgment is also rendered for and in behalf of the class of persons represented by Plaintiffs, to-wit, the members of Plaintiff United Farm Workers Organizing Committee, AFL-CIO, and all other persons who because of their sympathy for or voluntary support of the aims of said Plaintiff union have engaged in, are engaging in, or may hereafter engage in peaceful picketing, peaceful assembly, or other organizational activities of or in support of said Plaintiff union or who may engage in concert of action with one or more of Plaintiffs for the solicitation of agricultural workers or others to join or make common cause with them in matters pertaining to the work and labor of agricultural workers. The Court hereby finds that the Plaintiffs named in Paragraph 1 of the Final Judgment are appropriate representatives of the class of persons herein described and this is a proper class action.

3. The Plaintiffs named and the persons described in Paragraph 1 and 2 of this Final Judgment are hereafter referred to herein by the term "Plaintiffs and the persons they represent."

4. This Final Judgment is rendered against and is directed to the named Defendants A. Y. Allee, as Captain, and S. H. Denson, Jack Van Cleve, Jerome Preiss, and T. H. Dawson, as Privates, of the Texas Ranger

Force which exists as a division of the Department of Public Safety as provided by Article 4413(11) of Vernon's Annotated Civil Statutes of Texas. This Final Judgment is also directed to the successors in office of the said named peace officers, to the agents and employees of such officers, and to all persons or peace officers acting in concert with them to whom knowledge of this Final Judgment shall come.

5. This Final Judgment is also rendered against and directed to Defendants Dr. Rene Solis as Sheriff of Starr County, Texas, Raul Pena and Roberto Pena as Deputy Sheriffs of Starr County, Texas, to their successors in office, to their agents and employees, and to all persons and peace officers acting in concert with them to whom knowledge of this judgment shall come.

6. This Final Judgment is also rendered against Defendant Jim Rochester as a specially commissioned peace officer and against Defendant B. S. Lopez as Justice of the Peace.

7. The Defendants named and the persons described in Paragraphs 4, 5 and 6 of this Final Judgment are hereafter referred to herein by the term "Defendants, their successors, agents and employees, and persons acting in concert."

8. On the basis of evidence credited by the Court and Findings of Fact in the Court's Opinion of June 26, 1972, the Court finds that Defendants, acting in concert, have engaed in a continuing course of conduct intended to deprive Plaintiffs of their constitutional rights, and have utilized certain specific statutes of the State of Texas as their authority repeatedly to arrest, jail, file charges, threaten to arrest, and disperse Plaintiffs and their sympathizers while the latter were engaed in constitutionally protected activities.

Accordingly, the Court hereby renders Declaratory Judgment under 28 U.S.C. Section 2201 as to the following specifically challenged statutes.

9. The Court declares and adjudges that Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, is null and void. The said portion of the statute reads as follows:

> "Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.
>
> " 'Mass picketing,' as that term is used herein, shall mean any form of picketing in which:
>
> "1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.
>
> "2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions."

10. The Court declares and adjudges that Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, are null and void. The said portions of the statute read as follows:

> "Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

"Section 2. * * *

"b. 'Secondary strike' shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

* * *

"d. The term 'secondary picketing' shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

"e. The term 'secondary bocott' shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

"(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

"(2) Picketing such person, firm or corporation; or

* * *

"(4) Instigating or fomenting a strike against such person, firm or corporation; or

"(5) Interfering with or attempting to prevent the free flow of commerce; or

"(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute."

* * *

"h. The term 'labor dispute' is limited to and

means an controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act."

11. The Court declares and adjudges that Article 784 of the Texas Penal Code is constitutional.

12. The Court declares and adjudges that Article 474 of the Texas Penal Code was null and void to the extent that it prohibited loud and vociferous language, and to the extent that it prohibited conduct in a manner calculated to disturb the person or persons present at the scene of the conduct. The void portion was the purported authority repeatedly used by Defendants unconstitutionally to arrest or threaten to arrest Plaintiffs and their sympathizers or to order or suggest that they disperse. The portion of said statute which is here declared to be null and void and to have caused the unconstitutional denial of the rights of Plaintiffs and their sympathizers is as follows:

> "Whoever shall go into or near any public place, or . . . near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek . . . in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollas ($200)."

Article 474 of the Texas Penal Code was amended during the pendency of this suit by Acts 1969, 61st Leg., p. 1510, ch. 454, Section 1, effective June 10, 1969.

The said amendment of Article 474 of the Texas Penal Code did not exist at the times of the events in this case, and the judgment of this Court does not adjudge the constitutionality of said amendment.

13. The Court declares and adjudges that Article 482 of the Texas Penal Code is null and void. The said statute reads as follows:

> "Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

14. The Court declares and adjudges that Article 439 of the Texas Penal Code is null and void. The said statute reads as follows:

> "An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof."

15. It is further ordered, adjudged and decreed by the Court that Defendants, their successors, agents and employees, and persons acting in concert, are permanently enjoined and restrained from enforcing that part of Article 5154d of Vernon's Civil Statutes of the State of Texas which is quoted in paragraph 9 of this Final Judgment, and that part of Article 5154f of Vernon's Civil Statutes of the State of Texas which is quoted in paragraph 10 of this Final Judgment, and that portion of Article 474 of the Texas Penal Code which is quoted in paragraph 12 of this Final Judgment, and Article 482 of the Texas Penal Code, and Article 439 of the Texas Penal Code, against Plaintiffs

and the persons they represent or any of them, by arresting, imprisoning, filing criminal charges, threatening to arrest, or ordering or advising or suggesting that they disperse under authority of any portion of such statutes as designated herein.

16. It is further ordered, adjudged and decreed by the Court that Defendants, their successors, agents and employees, and persons acting in concert with them, are permanently enjoined and restrained from any of the following acts or conduct directed toward or applied to Plaintiffs and the persons they represent, to-wit:

A. Using in any manner Defendants' authority as peace officers for the purpose of preventing or discouraging peaceful organizational activities without adequate cause.

B. Interfering by stopping, dispersing, arresting, or imprisoning any person, or by any other means, with picketing, assembling, solicitation, or organizational effort without adequate cause.

C. Arresting any person without warrant or without probable cause which probable cause is accompanied by intention to present appropriate written complaint to a court of competent jurisdiction.

D. Stopping, dispersing, arresting or imprisoning any person without adequate cause because of the arrest of some other person.

E. As used in this Paragraph 16, Subparagraphs A, B and D above, the term "adequate cause" shall mean (1) actual obstruction of a public or private passway, road, street, or entrance which actually causes unreasonable interference

with ingress, egress, or flow of traffic; or (2) force or violence, or the threat of force or violence, actually committeed by any person by his own conduct or by actually aiding, abetting, or participating in such conduct by another person; or (3) probable cause which may cause a Defendant to believe in good faith that one or more particular persons did violate a criminal law of the State of Texas other than those specific laws herein declared unconstitutional, or a municipal ordinance.

Clerk will enter this Final Judgment and provide counsel with true copies.

Done at Brownsville, Texas, this 4th day of December, 1972.

JOHN R. BROWN
John R. Brown, Chief Judge
United States Court of Appeals

REYNALDO G. GARZA
United States District Judge

WOODROW SEALS
United States District Judge

TRUE COPY I CERTIFY
ATTEST:
V. BAILEY THOMAS, Clerk

By Sofia Anderson
Deputy Clerk